

(25,471)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 641.

**J. F. SHEPARD, N. LOGAN, W. H. BILLINGS, ET AL.,
APPELLANTS,**

vs.

**JAMES M. BARKLEY, MODERATOR OF THE GENERAL
ASSEMBLY AND CHAIRMAN OF THE EXECUTIVE COM-
MISSION OF THE GENERAL ASSEMBLY OF THE PRES-
BYTERIAN CHURCH IN THE UNITED STATES OF
AMERICA, ET AL.**

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.**

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NUMBERS 3540 AND 3546.

**IN THE
DISTRICT COURT OF THE UNITED STATES**

**FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.**

APRIL TERM, 1913.

JAMES M. BARKLEY, ET AL., COMPLAINANTS,

VS.

HUGH HAYES, ET AL., DEFENDANTS.

**THE SYNOD OF KANSAS OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATE OF AMERICA, ET
AL., COMPLAINANTS,**

VS.

MISSOURI VALLEY COLLEGE, ET AL., DEFENDANTS.

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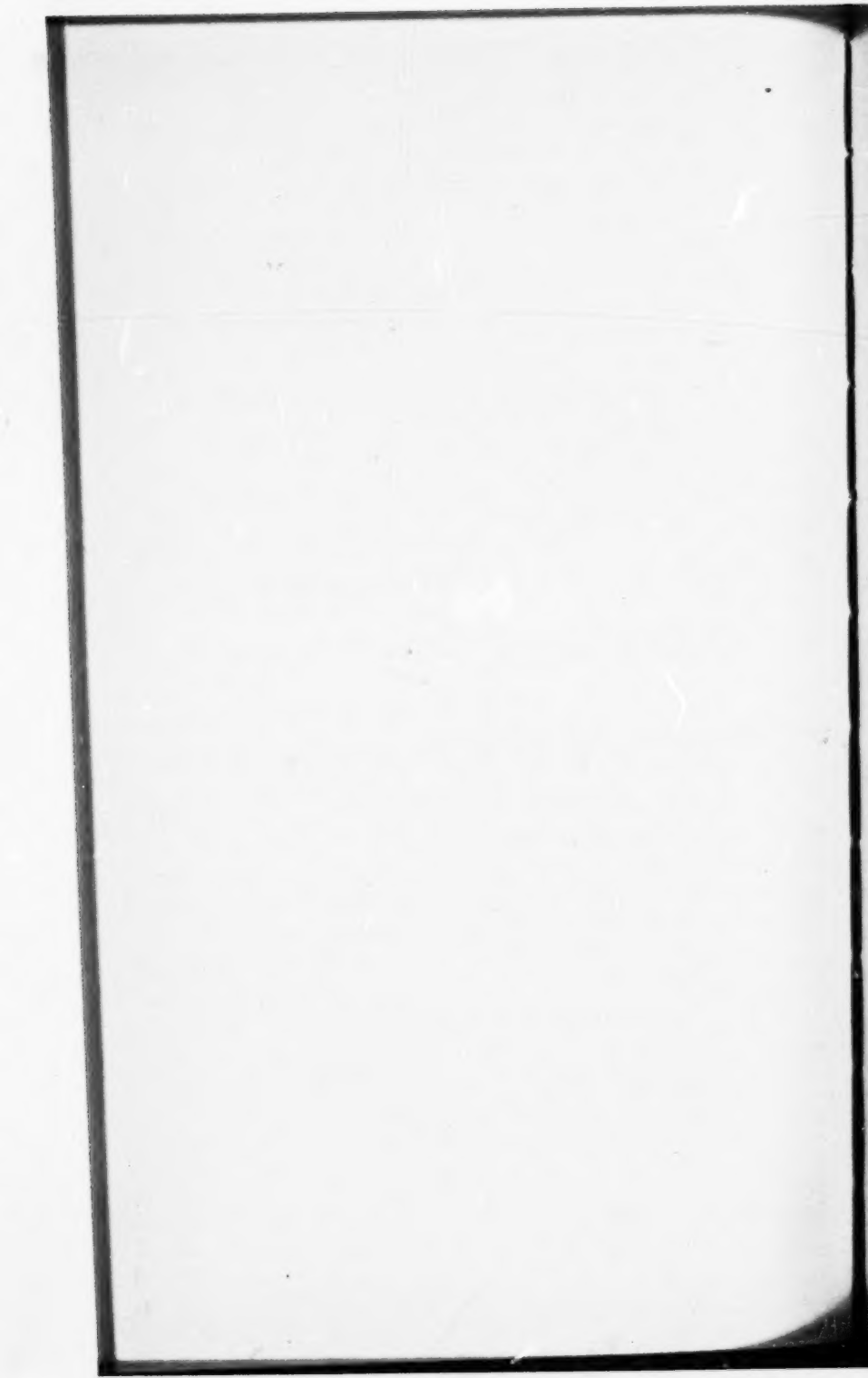
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IN THE
**District Court of The United States For The
 Western Division of The Western
 District of Missouri**

JAMES M BARKLEY, ET AL., Complainants,

VS.

No. 3546

HUGH HAYES, ET AL., Defendants.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN
 CHURCH IN THE UNITED STATES OF AMERICA

ET AL., Complainants,

VS.

No. 3540

MISSOURI VALLEY COLLEGE, ET AL., Defendants.

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NUMBERS 3540 and 3546

IN THE

**District Court of The United States For The
Western Division of The Western
District of Missouri**

APRIL TERM, 1913

JAMES M. BARKLEY, ET AL., Complainants

VS.

HUGH HAYES ET AL., Defendants.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATES OF AMERICA, ET
AL., Complainants.

VS.

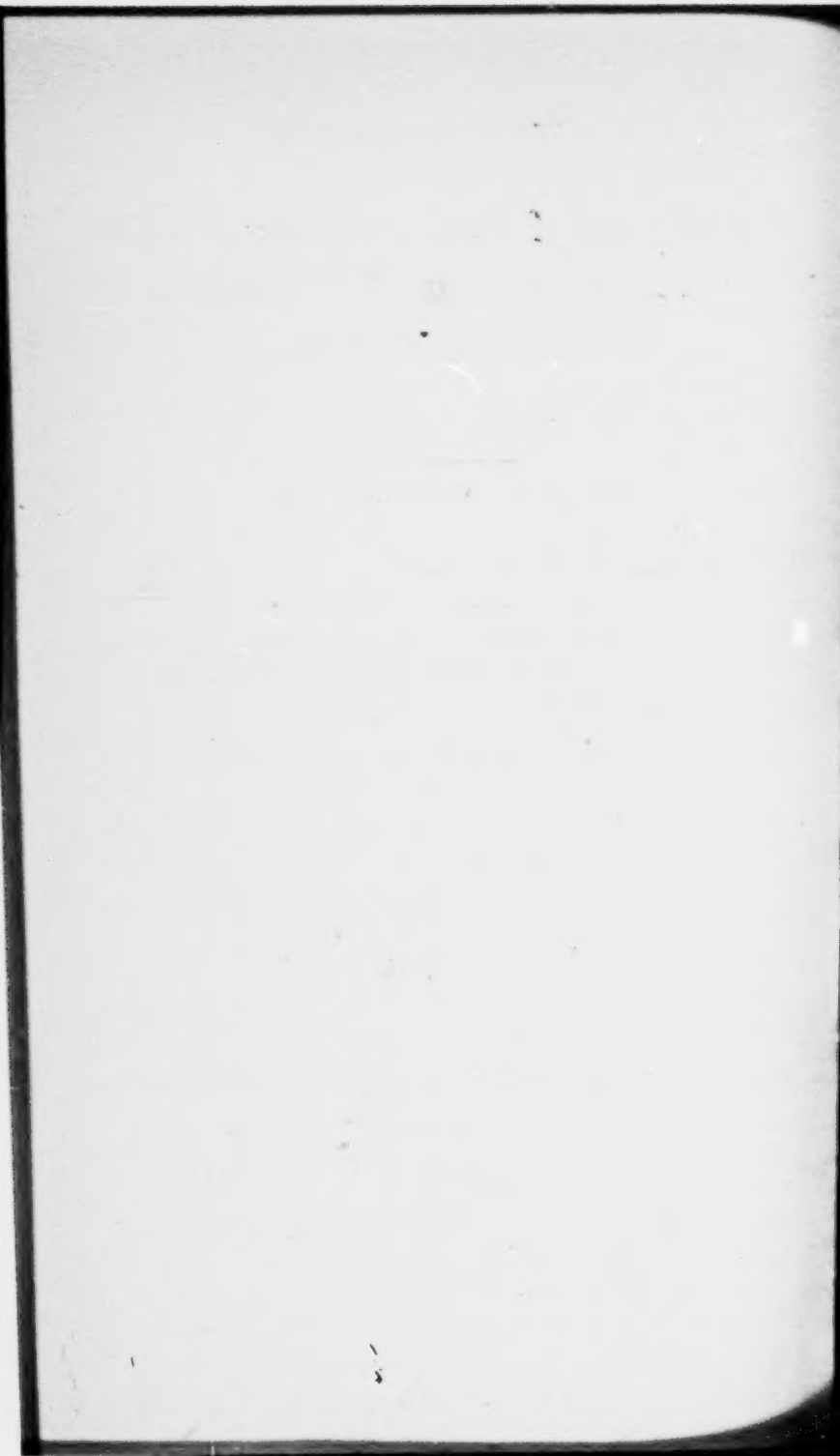
MISSOURI VALLEY COLLEGE, ET AL., Defendant

Containing Certain Documentary Evidence Offered by Defendant.

W. C. CALDWELL,
S. B. LADD,
R. M. REYNOLDS, and
T. B. ALLEN,
Solicitors for Defendants

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United States of America, Sct.

Be it remembered that heretofore, to-wit, at the regular November Term of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, and on the 13th day of November, 1909, a Bill of Complaint was filed in the cause wherein the Synod of Kansas of the Presbyterian Church in the United States of America, et al, are Complainants, and Missouri Valley College, et al are Defendants, and also at the regular November Term of the Circuit Court of the United States for the Western Division of the Western District of Missouri, and on the 8th day of December, 1909, a Bill of Complaint was filed in the cause wherein James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, et al are Complainants, and Hugh Hayes, et al, are defendants.

Said Bills of Complaint together with all the pleadings, etc., set out in three printed records, filed on June 25, 1914, are in words and figures as follows, to-wit:

(Citation on Appeal of J. W. Duvall, et al.)

United States of America,—ss.

The President of the United States, To the Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler,
—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed by an order filed and recorded in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, in a cause wherein J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx, successor to J. P. Grimes, deceased, are appellants, and you are appellees, and show cause, if any there be, why the decree rendered against the said appellants, as in said order al-

lowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missouri, this 5th day of June, A. D. 1914.

ARBA S. VAN VALKENBURGH,
Judge.

The United States of America,
Western District of Missouri,—ss.

We hereby acknowledge due service of the above citation, this 5th day of June, A. D. 1914.

VIRGIL V. HUFF,
FRANK HAGERMAN,
Solicitors for Complainants, Appellees

Endorsed: Filed in the District Court on June 5, 1914
Filed in Circuit Court of Appeals July 31, 1914.

c (Citation on Appeal of J. F. Shepherd, et al.)
United States of America—ss.

The President of the United States: To James M. Barkley Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed by an order filed and recorded in the Clerk's office of the District Court of the United States for the Western Division of the Western District of Missouri, in a cause wherein J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell

James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. Layman, A. W. Green, James C. Jenkins, John W. Walker, Robert C. Johnston, T. W. Craven, John T. Trent, Robert Abrahams, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Marshall, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, S. Graybiel, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts are appellants and you are appellees, and show cause, if any there why the decree rendered against the said appellants, as in and to the order allowing said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missouri, this 5th day of June, A. D. 1914.

ARBA S. VAN VALKENBURGH,
Judge.

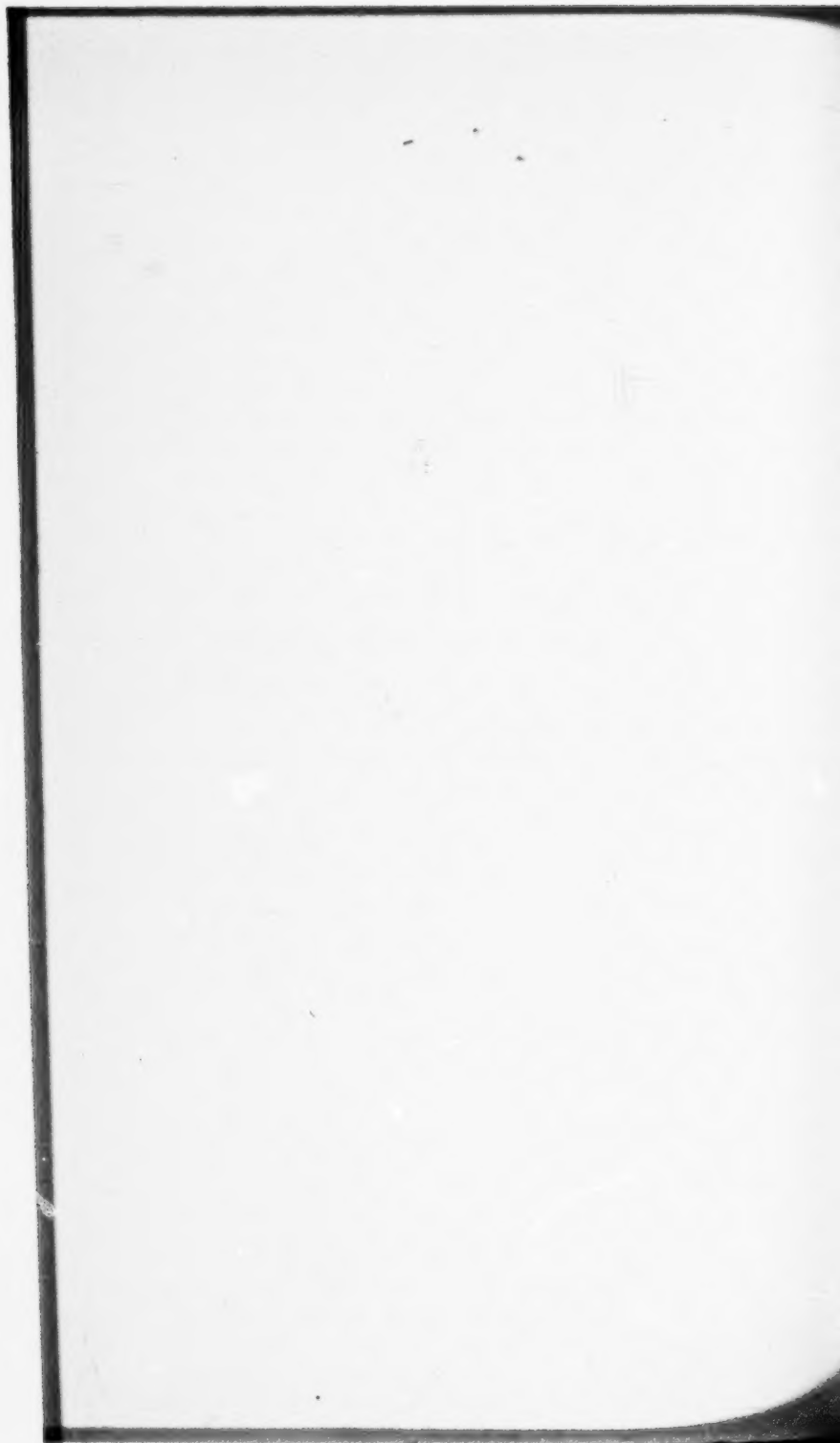
United States of America,
Western District of Missouri,—ss.

We hereby acknowledge due service of the above citation, this 5th day of June, A. D. 1914.

VIRGIL V. HUFF
FRANK HAGERMAN,
Solicitors for Complainants, Appellees.

Endorsed: Filed in the District Court on June 5, 1914.

Filed in Circuit Court of Appeals on July 31, 1914.



NUMBERS 3540 AND 3546.

**IN THE
DISTRICT COURT OF THE UNITED STATES**

**FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.**

APRIL TERM, 1913.

**JAMES M. BARKLEY, ET AL., COMPLAINANTS,
VS.**

HUGH HAYES, ET AL., DEFENDANTS.

**THE SYNOD OF KANSAS OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATE OF AMERICA, ET
AL., COMPLAINANTS,**

VS.

MISSOURI VALLEY COLLEGE, ET AL., DEFENDANTS.

BILL IN THE GENERAL CHURCH CASE.

**IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.**

**JAMES M. BARKLEY, Moderator of the General Assembly and
Chairman of the Executive Commission of the General As-
sembly of the Presbyterian Church in the United States of
America, and WILLIAM H. ROBERTS, Stated Clerk of the
General Assembly and Secretary of the Executive Commis-
sion of the General Assembly of the Presbyterian Church in
the United States of America, individually and as such officers
and representatives of the members of the Presbyterian Church
in the United States of America, Complainants, Against
Hugh Hayes, G. E. C. Sharp, J. F. Shepherd, O. H. Woods, Lee
Cook, V. N. Bray, Daniel G. Wade, V. B. Robertson, W. R.
Slaughter, N. Logan, W. H. Billings, A. M. Todd, W. T.
North, J. C. Bigham, S. A. Gammill, Lee Reese, F. E. P. Har-
lan, C. A. Wade, S. A. Catlin, M. M. Hummill, J. M. Weide-
meyer, James G. Turk, E. T. Steele, A. M. Buchanan, L. F.
Clemens, J. W. Duvall, R. L. Layman, and A. W. Green, De-
fendants. No. 3540.**

Bill in Equity.

To the Honorable, the Judges of the United States Court Aforesaid:

The above named complainants bring this their bill of complaint against the above named defendants, and therefore they aver:

1. This is a suit wherein there is involved a controversy wholly between complainant, James M. Barkley, a citizen of the State of Michigan, and complainant, William H. Roberts, a citizen of the State of Pennsylvania, and defendants each of whom is a citizen of the State of Missouri, and many of whom reside in this division and district.

The matter and amount in dispute herein exceeds exclusive of interest and costs, the sum or value of two thousand dollars. The suit as hereinafter shown, also arises under the Constitution and laws of the United States.

2. The Presbyterian Church in the United States of America, herein for convenience called the "Presbyterian Church," is, and has been for years, a voluntary religious association and organization, consisting now of more than one million three hundred thousand individuals who profess the Presbyterian faith and are communicants of the Church. Prior to May, 1906, it existed as a voluntary association, at which time it became merged, as hereinafter shown, with the Cumberland Presbyterian Church, since which time it has in the name of the Presbyterian Church in the United States of America, continued to exist as the consolidated and merged association. Of this association complainants are members, communicants and officers of its General Assembly, the duties of which officers are as hereinafter stated. This bill is brought not only on behalf of themselves, individually and as such officers, but also upon behalf of all other members having an interest in the matters in controversy, more than one million two hundred thousand of whom are residents of States other than Missouri, they being so numerous that it is inconvenient to attempt to join them as complainants herein. The membership in this Church is by contract between the members, evidenced and governed by a constitution, rules and regulations as construed, recognized and enforced by the authorities of this organization.

3. The Cumberland Presbyterian Church, herein for convenience called the "Cumberland Church," was for years, and up to the time of the said merger and amalgamation with the said Presbyterian Church in 1906, hereinafter more particularly described, a like voluntary religious organization in the United States, with more than one hundred and seventy-five thousand members and communicants of similar membership, of whom defendants are a part, the latter now claiming to be still such members and communicants, and that the former voluntary organization still exists, the said merger and amalgamation being ineffectual, null and void. Said defendants represent a class of persons so large that it is inconvenient to make them all parties, so that each of said

defendants is not only herein sued as a party in his own right, but is fairly representing the entire class of persons in his local congregation of the Church and in Missouri, making the same claim and taking the same position. The names of these defendants now designated, and their relation to the controversy, are more particularly set forth in paragraphs 9 and 10 hereof, but complainants insist that an account be taken of all the property in Missouri held in trust for the Cumberland Church, and when the same is ascertained, they should be permitted to bring in such persons, if any, as may be proper parties and affected by a decree. Defendants represent a class of persons too numerous to join herein acting in concert in excluding the members of the Presbyterian Church from the use of all property in Missouri, wherever located or however described, held in trust for the Cumberland Church.

4. The Presbyterian Church in its present organization, and as it existed prior to the merger, is subdivided for the purpose of more convenient religious worship, government and control, into local congregations worshipping in local structures located upon property held for the purpose. To this subdivision all the members assented. This property was acquired with funds contributed for the purpose, and held by trustees for the said churches and as a convenient place for local worship, under the direction, control and management of the Presbyterian Church, which is the real owner of the equitable title thereto, permitting, for the purpose of convenience, its immediate use by such persons as may, under its rules, and subject to its direction, be permitted to there worship and to be communicants. This property is held in trust for the teaching by the church of such creed and doctrine as are from time to time fixed, determined, amended, and promulgated by the judicatories hereinafter mentioned.

5. The Presbyterian Church, existing under what is known as the Presbyterian Form of Government, has now, and prior to such merger did have, by virtue of a written constitution, a gradation of what is known as church courts, judicatories and organizations, consisting of "Sessions," "Presbyteries," "Synods," and "the General Assembly," each in the order named having control of the other, the General Assembly being the highest court in the organization. Complainant James M. Barkley is Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the "Presbyterian Church;" and Complainant William H. Roberts is the Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the "Presbyterian Church," and said complainants as such officers and members of the "Presbyterian Church" are truly representative of all the members of said Church. The said courts and judicatories finally and exclusively determine for all those who belong to the Presbyterian Church all matters of creed and doctrine, church law and government, ecclesiastical control and rights of membership, including the use to which the property may from time to time be put, deciding what if any changes in creed

and doctrine can be made, when the same have been made, to what extent members are bound thereby, and when members have seceded from the Church, and when they lose their membership and interest therein, no member having any interest in the property except as an incident to his membership in the organization. The Presbyterian Church has, through the church judicatories aforesaid a direct and fixed interest in and to the properties described in paragraph 10 hereof, in that they have the absolute and exclusive right to determine the nature of the use to which any church property shall be put, who shall use the same, the use under their constitution, rules and regulations being incident to membership, and the final and exclusive power to determine when membership exists and when the right thereto ceases, thereby absolutely controlling the use of the property. It also has full power of visitation, including the right to correct any abuse in the use of the property, and give such directions as are deemed proper as to the particular use which from time to time be made thereof; and, finally, the reversionary right or interest upon dissolution or disruption of the local congregation is absolute in the church itself, so that it takes the property with the absolute right of disposal thereof.

6. The courts and judicatories of the Church hereinbefore mentioned are thus constituted, and among other things, thus empowered:

(a) The Session is composed of Ruling Elders (members of the church and communicants of the local congregation) selected by the communicants, and of the Pastor of the local church organization, such Pastor not being a member of the local body, but a member of the Presbyterian Church, by it assigned to, and for it in charge of, the local body. The Session has full jurisdiction over the conduct of the local congregation, and subject to the superintending jurisdiction of the higher courts of said Church, has exclusive power to determine absolutely the uses to which the communicants and members of the local congregation may subject any property used, by such local congregation.

(b) The Presbytery consists of all the ministers in number not less than five, and one Ruling Elder from each local congregation within a certain prescribed and specified district. It has the superintendence and control of the Sessions and oversight of the local churches within the prescribed territory, having power to hear all appeals, complaints and references that may be brought before it from the Session, with full power to visit particular churches, to inquire into their state, redress any evils that may have arisen therein, to unite or divide congregations to form or receive new congregations, and in general to order and direct whatsoever may pertain to the welfare of the churches within its district, their congregations and the properties used by them.

(c) The Synod is composed of the ministers of three or more Presbyteries, and Elders chosen by the Sessions of the local churches within the bounds thereof and has supervision over each Presbytery within its district, with power to decide upon appeals,

complaints and references brought before it from the Presbyteries, to decide such matters generally as affect the doctrine or constitution of the Church, to redress errors or wrongs by any Presbytery, to see that each Presbytery obeys the constitution, and to make such orders as it deems proper with respect to any Presbytery or Session and the people under their care, and generally to do such acts as tend to promote the welfare of the Church, with power to propose to the General Assembly for its adoption such measures as may be deemed of common good.

(d) The General Assembly, which is the highest judicatory of the Presbyterian Church, represents in one body all of the particular churches of the denomination and consists of an equal delegation of ministers and Elders from each Presbytery. It has the right to review the record of every Synod and approve or correct same. It constitutes the bond of union, peace, correspondence and mutual confidence amongst all the churches subject to its jurisdiction, and to it is committed the right to visit and superintend the concerns of the whole Church, it being the final and highest power of the Church at large to superintend, govern and control the lower bodies, and to finally decide when, under what circumstances and upon what terms the Church may merge, amalgamate and consolidate with another. The rights of the Presbytery, Synod and General Assembly respectively, over the judicatories under it are vistorial in their nature, including the right to direct the Session of a local church as to the uses to which the property shall be put, and by whom it shall be used. These bodies are vested with the sole and exclusive right to determine (a) who are or who may become members, and under what circumstances membership shall exist; (b) when, how, and under what conditions there shall be a merger with another Church; and (c) to what extent the creed and doctrine of the Church may be changed, when they are changed, and what at any time is the existing creed and doctrine of the Church. Such rights are vested by virtue of the contract made by the members, evidenced by the constitution, rules and regulations, and by said contract of membership. Each member of the church agreed that all such questions should be thus, and in no other manner and by no other tribunal, determined and decided.

7. The Cumberland Church at all times during its separate existence had a similar organization to that of the Presbyterian Church, the contract of membership was the same, and the allegations of paragraph 6 are alike applicable to that Church as if its name had been used therein instead of the Presbyterian Church. At the time the merger hereinafter mentioned, the Cumberland Church had various local church congregations which worshipped in buildings and used property in different places in Missouri, some of which is hereinafter described more particularly. All of this property was acquired by the Church and held in trust for it, not to be used by those professing a particular creed and doctrine in existence at the time of its acquisition, but to be used by and for the denomination whose doctrine and creed should be such as

from time to time are determined by the judicatories of such Church, or its successor, so that if and when it is amalgamated and merged with another Church, the trust passed to and became binding upon the merged body, and each member of each of the constituent Churches as merged had, by virtue of the merger and his membership in the merged Church, a direct and beneficial interest in the property, which thereby became subject to the use of the united Churches.

8. In 1905 the Presbyterian and Cumberland Churches aforesaid, as then existing throughout the United States, had substantially the same doctrine and creed. In accordance with the provisions of the constitutions, rules and regulations of each body, and the contracts of the members of each as between themselves, by their respective Presbyteries and General Assemblies fully authorized to act and bind all the members, entered into a contract, by the terms of which it was agreed that: (a) The two Churches should be amalgamated, merged and united into one Church, of the name of the "Presbyterian Church in the United States of America," which should take, hold, succeed to and possess all the legal, corporate and property rights and powers of the separate Churches the same as if it were a continuance of each, and the ministers, officers and membership of the two separate Churches should be that of the consolidated Church, with the same force and to the same extent as if the members of each Church were admitted to and became members of the other; (b) The creed and doctrine of the new organization were set forth and stated, and declared and found to be (that which was a fact) no departure from that of either of the constituent Churches:

(c) The organization of the merged Churches was in some detail changed so that in the merger there would be proper representation from what were before separate Churches, and each member of each constituent Church became a member of the merged Church.

9. Thereafter such steps were taken as were necessary to and did in fact carry out and complete the said merger, and made one of that which before had been two voluntary church organizations. The separate church organizations before the merger, by their respective judicatories, after a full hearing, decided that the creed and doctrine of the two churches theretofore existing were those of the new and amalgamated Church. Some of the former members of the Cumberland Church refused to abide by, or enter into, the new organization, as hereinafter shown, and under its constitution, rules and regulations, are seceders, and not entitled to the benefit of membership in said United Church.

10. (a) At the time of the merger there were local congregations and church properties of the Cumberland Church at the places mentioned in subdivision (b) of this paragraph, and at these places some of the former members of that body and communicants of the local congregations refuse to recognize the merger as legal, but declare the same to be invalid; they refuse to abide by the rulings

of the church judicatories or to accept the creed and doctrine set forth in the said contract and adopted by said Churches, but they seceded from the Churches and have by the church judicatories, been treated as and decided to be seceders from the Church, no longer having a membership therein. They have conspired and confederated together and agreed to act in common and in concert, and attempt to keep up as legal the former separate organization of the Cumberland Church, to seize, control and use for their own purpose all of the property formerly held by that Church, to exclude therefrom and from the use thereof all former members who have recognized the merger or treated it as valid, and all members of the merged Church. They have seized and held possession of the church property and excluded from the use thereof all persons who have recognized the merger; they threaten to institute suits as to each specific property to recover title thereto, and to interfere with, molest and prevent complainants and those represented by them from using the church property, houses of worship, parsonages and church funds. There were about fifteen hundred members of the Cumberland Church in Missouri who so refused to recognize the merger and are engaged in the said conspiracy. The defendants are among those who have so conducted and are conducting themselves. They represent a class of persons too numerous to be conveniently joined as defendants herein.

(b) The place where such acts are taking place, the church property so claimed, and from the use of which defendants are actively attempting to exclude complainants and those represented by them, the persons there so engaged in acting, being representatives of the class of persons hereinbefore described, are as herein set forth:

1st. In Saline County, Missouri, the representative defendants are Hugh Hayes and G. E. C. Sharp, and the property claimed by them and to the beneficial use of which complainants are entitled is as follows: A portion of lot Number 105, East Marshall, in the City of Marshall, Saline County, Missouri, and described as follows; commencing at the Southwest corner of said lot number 105, running East along Morgan Street 90 ft., thence North 90 ft., thence West 90 ft., to Odell Avenue, thence South along Odell Avenue 90 ft. to the place of beginning, being 90 feet square, except 20 feet square in the Northeast corner of the above described portion of said lot number 105.

A part of lot number 105 of East Marshall, Missouri, described as follows: Five feet east and west by 20 feet north and south off the West side of 20 feet square heretofore reserved in the northeast corner of a tract of 90 feet square, conveyed to said trustee by deed from said Thomas G. Ehrnman and wife, dated July 3rd, 1889, and recorded in Deed Book 61, at page 569 in the Recorder's office for Saline County, Missouri, as appears from the deed therewith filed.

Lot 7 and East $\frac{1}{2}$ of lot 8, in Block number 23, in English's Addition to the City of Marshall, used by the local congregation of

the Cumberland Presbyterian Church as a Mission Church and which now belongs to the Presbyterian Church in the United States of America, in Saline County, Missouri

Also, 79 feet off of the North side of Lot 8, in Block 2, in Haggins' Addition in the City of Marshall, in Saline County, Missouri.

2nd. In Clark County, Missouri, the representative defendant is J. F. Shepherd, and the property claimed by him to the beneficial use of which complainants are entitled, is herein described by reference, the particular description of which is in the deed to said property recorded on April 5th, 1907, at Book 60, page 183, in the office of Recorder of Deeds of said Clark County, Missouri.

3rd. In Linn County, Missouri, the representative defendant is O. H. Woods, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, the particular description of which is found at Book 157, pages 148 and 149, in the office of the Recorder of Deeds of said Linn County, Missouri.

4th. In Dent County, Missouri, the representative defendant is Lee Cook, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, the more particular description appearing from three deeds, one recorded April 3, 1886, at Book W, page 511; one January 19th, 1895, in Book 31, at page 542, and one recorded April 3rd, 1902, Book 39, at page 74, all in the office of the Recorder of Deeds for Dent County, Missouri.

5th. In Greene County, Missouri, the representative defendant is V. N. Bray, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, the particular description of which is found at Book P., page 690, Book 82, page 63, and Book 89, at page 456, in the office of the Recorder of Deeds for Greene County, Missouri.

6th. In Lafayette County, Missouri, the representative defendant is Daniel G. Wade, and the property claimed by him and to the beneficial use of which complainants are entitled, is described as follows: Lots Fifteen (15), Fourteen (14), Thirteen (13), Twelve (12) and Eleven (11), Block Fourteen, in the City of Odessa, in Lafayette, County, Missouri.

7th. In Jackson County, Missouri, the representative defendant is V. B. Robertson, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, the particular description of which is found at Book 131, page 258, in the office of Recorder of Deeds of Jackson County, Missouri.

8th. In Chariton County, Missouri, the representative defendant is W. R. Slaughter, and the property claimed by him and to the beneficial use of which complainants are entitled, is herein described by reference, the more particular description of which

is found at Book 18, page 503, and Book 18, at page 551, in the office of the Recorder of Deeds of Chariton County, Missouri.

9th. In Lawrence County, Missouri, the representative defendants are N. Logan, S. H. Gammill and M. M. Hummill, and the property claimed by said Logan and to the beneficial use of which the complainants are entitled, is herein described as follows: Lots Sixteen (16), Seventeen (17) and Eighteen (18), Block Seventeen (17) original survey of Aurora, Missouri, the same being in Lawrence County, Missouri, the deed to which is recorded at Book Z, page 51, in the office of the Recorder of Deeds of Lawrence County, Missouri.

The property claimed by said Gammill and to the beneficial use of which the complainants are entitled is herein described by reference, the more particular description of which is to be found at Book 54, page 508, in the office of the Recorder of Deeds of Lawrence County, Missouri.

And the property claimed by said M. M. Hummill and to the beneficial use of which complainants are entitled, is herein described by reference, the more particular description of which is to be found at Book 67, page 515, in the office of the Recorder of Deeds of Lawrence County, Missouri.

10th. In Macon County, Missouri, the representative defendant is W. H. Billings, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, the particular description of which is found at Book 6, page 13, in the office of the Recorder of Deeds of Macon County, Missouri.

11th. In Schuyler County, Missouri, the representative defendants are A. M. Todd and W. T. North, and the property claimed by said Todd, and to the beneficial use of which the complainants are entitled, is herein described by reference, the more particular description of which is found at Book 45, page 298, in the office of the Recorder of Deeds of Schuyler County, Missouri; and the property claimed by said North to the beneficial use of which the complainants are entitled, being a church house belonging to the Presbyterian denomination, used by the McGready congregation of the Presbyterian Church in the United States of America, the more particular description of which property is not known to these complainants, except that the same is located in Schuyler County, Missouri, and is used by the said congregation, and these complainants ask leave hereafter to amend this bill in this particular, making the description to the property more definite and certain.

12th. In Buchanan County, Missouri, the representative defendant is J. C. Bigham, and the property claimed by him and to the beneficial use of which complainants are entitled, is herein described by reference, the more particular description of which is found at Book 134, page 240, in the office of the Recorder of Deeds for Buchanan County, Missouri.

13th. In Vernon County, Missouri, the representative defendant is E. T. Steele, and the property claimed by him and to the beneficial use of which complainants are entitled, is described as follows: "The East one-half ($\frac{1}{2}$) of the North one hundred and nine (109) feet of the Fractional Block No. Eighteen (18), in the City of Nevada, Missouri," which said deed is recorded at Book 89, page 227, in the office of the Recorder of Deeds for Vernon County, Missouri.

14th. In Bates County, Missouri, the representative defendant is Lee Reese, and the property claimed by him and to the beneficial use of which complainants are entitled, is herein described by reference, the more particular description of which is found in Book 126, at page 141, office of Recorder of Deeds of Bates County, Missouri.

15th. In Randolph County, Missouri, the representative defendant is F. E. P. Harlan, and the property claimed by him and to the beneficial use of which the complainants are entitled, is described as follows: Lots One (1), Two (2) and Three (3), Block One (1), Young & Stevens' Addition to the City of Moberly in Randolph County, Missouri, and the deed conveying said title is shown at Book W, page 251, and is recorded under date of Dec. 4th, 1869.

16th. In Henry County, Missouri, the representative defendants are C. A. Wade, J. M. Weidemeyer and James Turk, and the property claimed by the first of them, said Wade, and to the beneficial use of which complainants are entitled, is described as follows: Lots Five (5) and Six (6), Tanniehill's 1st Addition to the City of Blairstown, Missouri, which deed is found recorded at Book 107, page 4, is dated August 2, 1892, and is recorded October 27, 1894, said property being in Henry County, Missouri; and the property claimed by the second of them, the said J. M. Weidemeyer, and to the beneficial use of which complainants are entitled, is described as follows: Lot 51, Weaver's Addition to the City of Clinton, in Henry County, Missouri, and the deeds conveying the same are found in Book R, page 39, Book 5, page 215, Book 21, page 389, Book 21, page 398, in the office of the Recorder of Deeds in Henry County, Missouri; and the property claimed by the said James G. Turk, and to the beneficial use of which complainants are entitled is described as follows: $\frac{1}{2}$ acre commencing at a point 208 1-3 feet due North of Southeast corner of Section 10, Township 41, Range 27, thence North 208 1-3 feet, West 208 1-3 feet, South 208 1-3 feet, East 208 1-3 feet to beginning in Henry County, Missouri, and the deed conveying same is found in Book 84, at page 17, in the office of the Recorder of Deeds of Henry County, Missouri.

17th. In Johnson County, Missouri, the representative defendant is S. A. Catlin, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, the same being more particularly described in Book 96 at page 341 and Book U, page 86 and 87, in the office of the Recorder of Deeds of Johnson County, Missouri.

The defendants set forth in the above named counties are representative of the class of defendants in such counties relative to the property herein above described. The property described by reference to the records of the various counties is situate in the County wherein reference is made to said records respectively, and the record of the deeds to each parcel and lot of property hereinabove described by reference is hereby made a part of this petition as fully as if said deeds were set out in full herein.

The defendants, A. M. Buchanan, L. F. Clemens, J. W. Duvall, R. L. Layman and A. W. Green, are herein made defendants representing what is claimed by them to the Synod of Missouri, of the former Cumberland Presbyterian Church, and are actively engaged in inciting and furthering the conspiracy hereinafter set out, as having in view the taking from the Presbyterian Church in the United States of America, and subjecting to their own use and benefit, the property hereinbefore set out, which is subject to the uses of the Presbyterian Church in the United States of America.

11. There has hereinbefore been given a specific description of part only of the property in Missouri of the Cumberland Church. One of the purposes of this bill is to enjoin defendants and their co-conspirators from interfering with or preventing the use by the Presbyterian Church and its members, whether formerly of the Church of that name or of the Cumberland Church, of the property in Missouri held in trust for and formerly used by the latter, whether the same be specifically described herein or not. Complainants have not now a description of all such property, nor the names of all the persons who are conspiring with defendants to do the wrongful acts herein complained of; they have, however, taken possession of and exclude the members of the Presbyterian Church from the use of much property held in trust for the Cumberland Church, a more specific description of which cannot now be given because of the lack of information in reference thereto. The complainants therefore reserve the right to hereafter by amendment or supplement hereto, or by further bill, to give further descriptions of property and make as defendants persons claiming any interest in any of such property heretofore or hereafter described, and persons doing or threatening to do any of the wrongful acts complained of. This for the purpose of settling at one time and so far as possible in one proceeding the rights of the Presbyterian Church and its members in and to all the property in Missouri held in trust for the Cumberland Church. To that end an account should be taken of all such trust property and it should be impressed with a trust in favor of the Presbyterian Church.

12. The complainants and those represented by them have an equitable and beneficial interest in and to all the real estate hereinbefore described which they are entitled to have quieted against the defendants and all persons acting with them. Unless enjoined herein, defendants will, as they have threatened to do,

exclude from the use of the same, all the members of the Presbyterian Church whether or not they were formerly members of the Cumberland Church.

13. The defendants claim that: (a) Under the law of Missouri as decided in October, 1909, by the Supreme Court in that State in the case of *Boyles v. Roberts*, 121 S. W. Reporter, 805, the court can, regardless of any decision by church authorities heretofore or hereafter made, determine whether the creed and doctrine of the merged Church is the same as that of the former Cumberland Church, and if not then the property is, without more, forfeited to those who have refused to follow the merged Church or abide by the merger.

(b) There was in fact such departure in creed and doctrine by those who followed the merged Church, whereby all the property formerly owned by the Cumberland Church was forfeited to and became that of the defendants and the class of persons represented by them.

Against such claims and in support of, and as one of the grounds of their complaint, complainants invoke the protection of the 14th Amendment to the Constitution of the United States, which prohibits the State from making or enforcing any law which abridges the privileges and immunities of complainants, from taking without due process of law the property of the Presbyterian Church, and from depriving complainants of the equal protection of the law. Under that amendment complainants and each person represented by them, have the right and privilege of membership in their Church, to contract therefor with other members, to have the church creed and doctrine and membership determined by the church authorities and to have enforced the trust upon which the property is held so as to be applied to the use of those who complied with the church rules and regulations and the creed and doctrines as by the church authorities determined to exist. So complainants and those represented by them invoke the protection of that Amendment against the forfeiture of their interest in the church property (held in trust for those following the creed and doctrine as from time to time declared by church authorities) if and when a court may attempt to decide that they follow a different creed and doctrine from that in existence when the property was acquired. They also invoke the aid and protection of that Amendment in having accorded to them the equal protection of the law. The State Constitution gives to all persons freedom as to religious views, practices and beliefs. There is thus accorded to others said rights, but they are denied to complainants and those for whom they sue, in that they are denied the privilege of following the creed and doctrine of their Church as same may, in accordance with the contract of church membership, be from time to time amended, changed or promulgated, as determined by the proper church judicatories, but are required as a condition to membership to always confine themselves to the creed and doctrine which may be judicially determined by the civil courts to be the doctrine of such Church. So under the law of

Missouri, any other voluntary association can have and maintain judicatories which are the sole and exclusive judges of membership and when the same is forfeited, which right is, if the claim of defendant be well founded, denied to other religious associations, for that the test of continued membership is made dependent upon a finding of the civil courts of what is the creed and doctrine at the time adopted and followed by such Church.

Forasmuch as complainants have no remedy according to the strict rules of the common law, and can only have relief in a court of equity where such matters are peculiarly cognizable, complainants pray a decree quieting the title to all of the property herein described in and to the Presbyterian Church, fixing and determining the interest acquire therein by virtue of the contract of merger made and carried out as aforesaid; that the defendants and each of them and all persons acting in concert with them be temporarily and permanently enjoined from in any wise interfering with the use by complainants and the members of the Presbyterian Church of any of the property in Missouri held by trustees for the benefit of the Cumberland Church at the time of the merger herein referred to; and that an account be taken of all the property in Missouri heretofore held in trust by the Cumberland Church and the same be impressed with the right of the Presbyterian Church to the use of the same, and that defendants be likewise enjoined from interfering therewith.

And may it please Your Honors to grant unto complainants writ of subpoena directed to each of the defendants named in the caption hereof, requiring them by a day certain to be and appear and make answer to this bill, but not under oath, an answer under oath being expressly waived.

And your orator will ever pray, etc.

FRANK HAGERMAN,
VIRGIL V. HUFF,
Solicitors for Complainants.

W. M. WILLIAMS,
J. W. SUDDATH,
Of Counsel.

State of Missouri, County of Jackson, ss.

I, Virgil V. Huff, upon oath, say: I am one of the solicitors for complainants, who are not at the present time within this jurisdiction. I have read the foregoing bill of complaint and am familiar with the facts stated therein, and same are to my knowledge true, except as to those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

Virgil V. Huff.

Subscribed and sworn to before me this 8th day of December, 1909. My commission expires June 7th, 1910.

E. E. Ball,
Notary Public, Jackson County, Missouri.

AMENDMENT TO BILL IN EQUITY IN GENERAL CHURCH CASE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

JAMES M. BARKLEY, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and WILLIAM H. ROBERTS, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, Complainants, Against Hugh Hayes, G. E. C. Sharp, J. F. Shepherd, O. H. Woods, Lee Cook, V. N. Bray, Daniel G. Wade, V. B. Robertson, W. R. Slaughter, N. Logan, W. H. Billings, A. M. Todd, W. T. North, J. C. Bigham, S. A. Gammill, Lee Reese, F. E. P. Harlan, Charles O. Wall, S. A. Catlin, M. M. Hunnell, J. M. Weidemeyer, James G. Turk, E. T. Steele, A. M. Buchanan, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, C. Elmer Turner, E. S. Morrison, James C. Jenkins, John W. Walker, Heber C. Johnston, J. A. Chinn, T. W. Craven, Elisha Hall, John T. Trent, R. S. Burney, F. M. Adair, Ambrose E. Larue, John R. Kerr, Napoleon M. Irwin, Hubert Elliott, Robert Graham, Frank Ramsey, Alexander Phoenix, Samuel E. Atkins, James M. Russell, William E. Scott, James E. Shaw, John Neally, Lee McLemore, A. A. Young, Ephraim Woodrow, J. W. Manning, Erastus W. Hillhouse, S. M. Fryar, Caleb Andrews, A. Harrison Devin, James Martin, William L. Foley, Jesse William Kennedy, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybiel, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, Thomas C. Newman, Samuel H. Murray, James Davis, J. Thomas Jones, and James E. Eberts, Defendants. No. 3546.

Amendment to Bill in Equity.

To the Honorable, the Judges of the United States Court Aforesaid:

Now come the complainants and by leave of court file this their amendment to their original bill, and thereupon aver:

1. In the original bill, subdivision (b) of paragraph 10 reads:
“(b) The places where such acts are taking place, the church property so claimed, and from the use of which defendants are actively attempting to exclude complainants and those represented by them, the persons there so engaged in acting being representative of the class of persons hereinbefore described, are as herein set forth.”

Among other places where like acts are taking place, among other church property thus claimed and from the use which defendants and their representatives are actively attempting to exclude complainants, and those represented by them and among other persons so engaged in acting, being representatives of the class of persons hereinbefore described, are the acts, property and persons, not specifically set forth in the original bill, being as follows:

1st. In Gentry County, Missouri, the representative defendant is Albert W. Green, and the property claimed by him and to the beneficial use of which complainants are entitled, is herein described by reference, the more particular description of which is found in Book 107 at page 246; Book 110, page 308; Book 117, pages 136 and 137, in the office of the Recorder of Deeds for said Gentry County, Missouri.

2nd. In Randolph County, Missouri, the representative defendants are C. Elmer Turner, E. S. Morrison, James C. Jenkins, John W. Walker and Heber C. Johnston.

And the property claimed by said C. Elmer Turner, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 57 at page 337, in the office of the Recorder of Deeds for Randolph County, Missouri.

And the property claimed by the said E. S. Morrison, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book P, at page 349, in the office of the Recorder of Deeds for said Randolph County, Missouri.

And the property claimed by the said James C. Jenkins, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book P, at page 349, in the office of the Recorder of Deeds for said Randolph County, Missouri.

And the property claimed by the defendant John W. Walker, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 6 at page 174, in the office of the Recorder of Deeds for said Randolph County, Missouri.

And the property claimed by the said Heber C. Johnston, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 11 at page 58 and Book 11 at page 59 in the office of the Recorder of Deeds for said Randolph County, Missouri.

3rd. In Macon County, Missouri, the representative defendants are J. A. Chinn, T. W. Craven and Elisha Hall.

The property claimed by the said J. A. Chinn, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 98 at page 379, in the office of the Recorder of Deeds for Macon County, Missouri.

And the property claimed by T. W. Craven, and to the bene-

ficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 14, at page 318, in the office of the Recorder of Deeds for Macon County, Missouri.

And the property claimed by the said Elisha Hall, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 76 at page 213, in the office of the Recorder of Deeds for Macon County, Missouri.

4. In Scotland County, Missouri, the representative defendant is John T. Trent, and the property claimed by him and to the beneficial use of which complainants are entitled is herein described by reference, a more particular description of which is to be found in Book 32 at page 310, in the office of the Recorder of Deeds for Scotland County, Missouri.

5th. In Cooper County, Missouri, the representative defendants are F. M. Adair and L. F. Clemens (the latter being a resident of Saline County, Missouri, but claiming said property in Cooper County, Missouri), and the said property so claimed and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 2 at page 338, in the office of the Recorder of Deeds for Cooper County, Missouri.

6. In Saline County, Missouri, the representative defendants are Ambrose E. Larue and L. F. Clemens.

The property claimed by the said Ambrose E. Larue, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 42, at page 332, in the office of the Recorder of Deeds for Saline County, Missouri, and the interest so claimed is an undivided one-half ($\frac{1}{2}$) interest in said property.

And the property claimed by the said L. F. Clemens, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 16 at page 409, in the office of the Recorder of Deeds for said Saline County, Missouri.

7th. In Jackson County, Missouri, the representative defendant is John R. Kerr, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 68 at page 602, in the office of the Recorder of Deeds for said Jackson County, Missouri.

8. In Johnson County, Missouri, the representative defendants are Napoleon M. Irwin, Hubert Elliott, Robert Graham, Frank Ramsey, Alexander Phoenix and James E. Eberts.

The property claimed by the said Napoleon M. Irwin, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book T at pages 446 and 448, in the office of the Recorder of Deeds for said Johnson County, Missouri.

And the property claimed by the said Hubert Elliott, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is as follows: One (1) square acre in the North-east corner of the West half of the South-west quarter of section eight (8), township forty-four (44), Range twenty-seven (27), Johnson County, Missouri.

And the property claimed by the said Robert Graham, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 27, page 112, and Book 128 at page 216, in the office of the Recorder of Deeds for said Johnson County, Missouri.

And the property claimed by the said Frank Ramsey, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book G at page 431; Book 34 at page 287, in the office of the Recorder of Deeds for Johnson County, Missouri.

And the property claimed by the said Alexander Phoenix and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 5 at page 336; Book 79 at page 483, in the office of the Recorder of Deeds for said Johnson County, Missouri.

And the property claimed by the said James E. Eberts, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 24, page 492, in the office of the Recorder of Deeds for said Johnson County, Missouri.

9th. In Henry County, Missouri, the representative defendant is Samuel E. Atkins, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 158 at page 381, in the office of the Recorder of Deeds for said Henry County, Missouri.

10th. In Dade County, Missouri, the representative defendants are William E. Scott and James E. Shaw.

A part of the property claimed by them, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 12 at page 768, in the office of the Recorder of Deeds for Dade County, Missouri.

And the other property claimed by them, and to the beneficial use of which complainants are entitled, is described as follows: Lot four (4) in Block (5) of Union Addition to the City of Greenfield, Dade County, Missouri, which said last named property is recorded in Book 69 at page 414, in the office of the Recorder of Deeds for said Dade County, Missouri.

11th. In Lawrence County, Missouri, the representative defendants are John Neally, Lee McLemore, A. A. Young, Ephraim

Woodrow, J. W. Manning, M. M. Hunnell and Erastus W. Hillhouse.

The property claimed by the said John Neally, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 94 at page 311, in the office of the Recorder of Deeds for Lawrence County, Missouri.

And the property claimed by the said Lee McLemore, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 46 at page 466, in the office of the Recorder of Deeds for said Lawrence County, Missouri.

And the property claimed by the said A. A. Young, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book J at page 476, in the office of the Recorder of Deeds for said Lawrence County, Missouri.

And the property claimed by the said Ephraim Woodrow, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 110 at page 423, in the office of the Recorder of Deeds for said Lawrence County, Missouri.

And the property claimed by the said J. W. Manning, and to the beneficial use of which complainants are entitled is herein described by reference, a more particular description of which is to be found in Book 49 at page 229, in the Office of the Recorder of Deeds for said Lawrence County, Missouri.

And the property claimed by the said M. M. Hunnell, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 67 at page 515, in the office of the Recorder of Deeds for said Lawrence County, Missouri.

And the property claimed by the said Erastus W. Hillhouse, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 40 at pages 48 and 50, in the office of the Recorder of Deeds for said Lawrence County, Missouri.

12th. In Greene County, Missouri, the representative defendant is S. M. Fryar, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 133 at page 633, in the office of the Recorder of Deeds for said Greene County, Missouri.

13th. In Polk County, Missouri, the representative defendants are Caleb Andrews and A. Harrison Devin.

The property claimed by the said Caleb Andrews, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book U, page 592, in the office of the Recorder of Deeds for said Polk County, Missouri.

And the property claimed by the said A. Harrison Devin and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 4 at pages 133 and 134; Book 47 at page 259, in the office of the Recorder of Deeds for said Polk County, Missouri.

14th. In Howell County, Missouri, the representative defendants are James Martin and William L. Foley, and Jesse William Kennedy.

The property claimed by the said James Martin and William L. Foley, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 41 at page 95, in the office of the Recorder of Deeds for said Howell County, Missouri.

And the property claimed by the said Jesse William Kennedy, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book R at page 316 in the office of the Recorder of Deeds for said Howell County, Missouri.

15th. In Butler County, Missouri, the representative defendants are F. M. Rose and Charles Rose, and the property claimed by them, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 71 at page 92, in the office of the Recorder of Deeds for said Butler County, Missouri.

16th. In New Madrid County, Missouri, the representative defendant is E. C. Haines, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 47, at page 328, in the office of the Recorder of Deeds for said New Madrid County, Missouri.

17th. In Dunklin County, Missouri, the representative defendants are J. S. Graybiel and R. L. Layman.

The property claimed by the said J. S. Graybiel, and to the beneficial use of which complainants are entitled, is the "Presbyterian Church of Malden, Missouri;" the deed to said property has not been found on the records of said Dunklin County, Missouri.

And the property claimed by the said R. L. Layman, and to the beneficial use of which complainants are entitled is herein described by reference, a more particular description of which is to be found in Book 35 at page 373, in the office of the Recorder of Deeds for said Dunklin County, Missouri.

18th. In Stoddard County, Missouri, the representative defendant is Laura Cook (wife of John M. Cook), and the property claimed by her, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 8, at page 626, in the office of the Recorder of Deeds for said Stoddard County, Missouri.

19th. In Mississippi County, Missouri, the representative defendants are R. L. Layman and E. G. Stewart, and the property

claimed by them, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book 45 at page 230, in the office of the Recorder of Deeds for said Mississippi County, Missouri.

20th. In St. Francois County, Missouri, the representative defendant is John D. Howell, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is to be found in Book V at page 194, in the office of the Recorder of Deeds for said St. Francois County, Missouri.

21st. In Cass County, Missouri, the representative defendant is R. S. Burney, and the property claimed by him, and to the beneficial use of which complainants are entitled, is herein described by reference, a more particular description of which is found in Book 88, page 524; Book 88, at 615; Book 154 at page 308; Book 154 at page 309; all in the office of the Recorder of Deeds for said Cass County, Missouri.

The defendants set forth in the above named counties are representative of the class of defendants in said counties relative to the property hereinabove described. The property described by reference to the records of the various counties is situated in the county wherein reference is made to said record, respectively, and the record of the deed to each parcel and lot of property hereinabove described by reference is hereby made a part of this petition as fully as if said deeds were set out in full herein.

2. Plaintiffs state that there were in the State of Missouri, prior to said union, various amounts held in trust for the use of certain subordinate divisions of the Cumberland Presbyterian Church, and which, by the union aforesaid and in pursuance of the enactments of the General Assembly enabling the successors of such subordinate divisions of said Cumberland Presbyterian Church, have passed to and are now held in trust for the united Church, and which sums are claimed by those named herein as defendants, and who refuse to recognize said union.

The funds so claimed, the original body for which the same were held, the successor for such original bodies, the names and amounts of said funds, the representative defendant claiming the same, and the trustee holding said funds, are as follows:

1st. William H. H. Stephens, as trustee at the time of the union aforesaid, held the fund known as "The Rueben A. Ewing Fund" of the amount of five hundred dollars (\$500.00) for the use of the New Lebanon Presbytery of the Cumberland Presbyterian Church, the successor judicatory to which is the Sedalia Presbytery of the Presbyterian Church in the United States of America, and the representative defendant claiming said fund is L. F. Clemens.

2nd. Wm. K. Howe, as trustee at the time of the union aforesaid, held a fund known as "The David H. Dinsmore Fund" of the amount of one thousand one hundred ninety-eight dollars forty-four cents (\$1,198.44), and accrued interest thereon, for the use of the

Ozark Presbytery of the Cumberland Presbyterian Church, the successor judicatory to which is the Ozark Presbytery of the Presbyterian Church in the United States of America, the present trustee being Eugene E. Stringfield, and the representative defendant claiming said fund is J. Thomas Jones.

3rd. William R. Russell, as trustee at the time of the union, held the fund known as "The Ozark College Fund" of the amount of seven hundred dollars (\$700.00), and accrued interest thereon, for the use of the Ozark Presbytery of the Cumberland Presbyterian Church, the successor judicatory to which is the Ozark Presbytery of the Presbyterian Church in the United States of America, and the representative defendant claiming said fund is J. Thomas Jones.

4. Luke H. Moss, George Ward, Wm. D. Maxwell, Robert Onstott and Bruce Mitchellhill, as trustees of Platte Presbytery of the Cumberland Presbyterian Church at the time of the union aforesaid, held the following funds in trust: The Fossill Fund of twelve hundred dollars (\$1200.00); the Fleming Mitchell Miller Memorial Fund of six hundred dollars (\$600.00); funds from the sale of the Dearborn church house, three hundred fifty dollars (\$350.00); funds from the sale of the Rock Creek church house, two hundred ninety-nine dollars (\$299.00); and funds from the sale of the Grand River church house, about two hundred and fifty dollars (\$250.00); making a total of two thousand eight hundred ninety-nine dollars (\$2899.00), the same being held by said trustees for the use of the Platte Presbytery of the Cumberland Presbyterian Church, the successor judicatory to which is the St. Joseph Presbytery of the Presbyterian Church in the United States of America, and the representative defendant claiming said funds is Albert W. Green.

5th. Hal F. Smith, as trustee at the time of the union aforesaid, held the fund known as "The Jamesport Church Fund" of the amount of six hundred dollars (\$600.00), for the use of the Chillicothe Presbytery of the Cumberland Presbyterian Church, and the successor judicatory to which is the McGee Presbytery of the Presbyterian Church in the United States of America, and the representative defendant claiming said fund is Albert W. Green.

6th. John C. Cobb, and others, as trustees of Lexington Presbytery of the Cumberland Presbyterian Church at the time of the union aforesaid, held trust funds of various amounts for divers purposes, amounting to two thousand nine hundred ten dollars (\$2,910.00), for the use of the said Lexington Presbytery of the Cumberland Presbyterian Church, and the successor judicatory to which is Kansas City Presbytery of the Presbyterian Church in the United States of America, and the representative defendant claiming said funds is Samuel H. McElvain.

7th. G. W. Shaw, J. R. Campbell, and M. B. Shipp, Elders composing the Session of Grand Prairie Presbyterian Church in the United States of America, in Randolph County, Missouri, hold a fund of two hundred dollars (\$200.00), received under the will of Freddie Nichols, deceased, for the purpose of keeping up the grave-

yard near said Grand Prairie Church, and as such trustees under the said will of Feddie Nichols, after the death of one Robert Shipp, are the owners in trust of the remainder in fee simple of one hundred twenty (120) acres of land described in said will of said Feddie Nichols, which will was made June first, 1899, and is recorded in the Book of Wills H, page 350, in the office of the Recorder of Deeds of said Randolph County, Missouri, and the representative defendant claiming said property to which the aforesaid trustees are entitled in the name of the Presbyterian Church in the United States of America, and for its use and benefit and the use of said local congregation, is Alonzo M. Buchanan.

3. Section 10, paragraph 16th of the original bill reads: "In Henry County, Missouri, the representative defendants are C. A. Wade, J. M. Weidemeyer and James Turk, and the property claimed by the first of them, said Wade, and to the beneficial use of which complainants are entitled, is described as follows: Lot five (5) and six (6), Tanniehill's 1st Addition to the City of Blairstown, Missouri, which deed is found recorded in Book 107, page 4, as dated August 2, 1892, and is recorded October 27, 1894, said property being in Henry County, Missouri; and the property claimed by the second of them, the said J. M. Weidemeyer, and to the beneficial use of which complainants are entitled, is described as follows: Lot 51, Weaver's Addition to the City of Clinton, Henry County, Missouri, and the deeds conveying the same are found in Book R, page 39, Book 5, page 215, Book 21, page 389, Book 21, page 398, in the office of the Recorder of Deeds in Henry County, Missouri, and the property claimed by the said James G. Turk, and to the beneficial use of which complainants are entitled, is described as follows: $\frac{1}{2}$ acre commencing at a point 208 $\frac{1}{3}$ feet due north of southeast corner of Section 10, Township 41, Range 27, thence north 208 $\frac{1}{3}$ feet, west 208 $\frac{1}{3}$ feet, south 208 $\frac{1}{3}$ feet, east 208 $\frac{1}{3}$ feet to beginning in Henry County, Missouri, and the deed conveying same is found in Book 84, at page 17, in the office of the Recorder of Deeds of Henry County, Missouri."

In this paragraph the name of the first defendant is Charles O. Wall, and not "C. A. Wade," and the paragraph should read thus:

"In Henry County, Missouri, the representative defendants are Charles O. Wall, J. M. Weidemeyer and James Turk, and the property claimed by the first of them, said Wall and to the beneficial use of which complainants are entitled, is described as follows: Lots five (5) and six (6), Tanniehill's 1st Addition to the City of Blairstown, Missouri, which deed is found recorded at Book 107, page 4, is dated August 2, 1892, and is recorded October 27, 1894, said property being in Henry County, Missouri, and the property claimed by the second of them, engaged in inciting and furthering the conspiracy set out in complainants' are entitled, is described as follows: Lot 51, Weaver's Addition to the City of Clinton, in Henry County, Missouri, and the deeds conveying the same are found in Book R, page 39, Book 5, page 215, Book 21, page 389,

Book 21, page 398, in the office of the Recorder of Deeds in Henry County, Missouri, and the property claimed by the said James G. Turk, and to the beneficial use of which complainants are entitled, is described as follows: $\frac{1}{2}$ acre commencing at a point 208 $\frac{1}{3}$ feet due north of southeast corner of Section 10, Township 41, Range 27, thence north 208 $\frac{1}{3}$ feet, west 208 $\frac{1}{3}$ feet, south 208 $\frac{1}{3}$ feet, east 208 $\frac{1}{3}$ feet to beginning, in Henry County, Missouri, and the deed conveying same is found in Book 84, at page 17, in the office of the Recorder of Deeds of Henry County, Missouri."

4. Complainants further state that James M. Russell, of Clinton, Henry County, Missouri, Edward R. Duggins, of Montrose, Henry County, Missouri, Samuel H. McElvain, of Marshall, Saline County, Missouri, Thomas C. Newman of Marionville, Lawrence County, Missouri, Samuel H. Murray, of St. Joseph, Buchanan County, Missouri, and James Davis, of Phillipsburg, Laclede County, Missouri, are herein made defendants as representing what is claimed by them to be the Synod of Missouri of the Cumberland Presbyterian Church, and are actively engaged in inciting and furthering the conspiracy set out in complainants' petition as having in view the taking from the Presbyterian Church in the United States of America and subjecting to their own use and benefit the property hereinbefore set out, and other property in the State of Missouri, belonging to the Presbyterian Church in the United States of America, and subject to the uses thereof which are not set out in this petition.

The said above named parties are going from place to place, over the State of Missouri, disturbing the congregations of the Presbyterian Church in the United States of America in Missouri, and endeavoring by threats and other means to secure possession of their houses of worship, and that said defendants threaten to continue in said annoyances and disturbances of the rights of these complainants and will not desist unless enjoined thereto by this court, and they are made defendants herein for said purpose so enjoining them from interfering with the rights of the complainants in and to the property owned by them and used by them within and for the State of Missouri, enjoining them as well as defendants A. M. Buchanan, L. F. Clemens, J. W. Duvall, R. L. Layman and A. W. Green named in the original bill, from the doing of like things.

5. The allegations of the original bill will apply to all the persons described in paragraphs one and two hereof with the same force and effect as if again set forth and applied to them.

Wherefore complainants pray that the parties herein named be also made defendants to this bill; that the same relief be given as prayed for in the original bill, with special injunctive relief, temporary and permanent, against the defendants mentioned in paragraph 1 herein, and that there be granted unto defendants, to-wit: Albert W. Green, C. Elmer Turner, E. S. Morrison, James C. Jenkins, John W. Walker, Heber C. Johnston, J. A. Chinn, T. W. Craven, Elisha Hall, John T. Trent, F. M. Adair, L. F. Clemens, Ambrose E.

Larue, John R. Kerr, R. S. Burney, Napoleon M. Irwin, Hubert Elliott, Robert Graham, Frank Ramsey, Alexander Phoenix, Samuel E. Atkins, James M. Russell, William E. Scott, James E. Shaw, John Neally, Lee McLemore, A. A. Young, Ephraim Woodrow, J. W. Manning, M. M. Hunnell, Erastus W. Hillhouse, S. M. Fryar, Caleb Andrews, A. Harrison Devin, James Martin, William L. Foley, Jesse William Kennedy, F. M. Rose and Charles Rose, E. C. Haines, J. S. Graybiel, Laura Cook (wife of John M. Cook), R. L. Layman, E. G. Stewart, John D. Howell, Charles O. Wall, Edward R. Duggins, Samuel H. McElvain, Thomas C. Newman, Samuel H. Murray, James Davis, J. Thomas Jones, Alonzo M. Buchanan and James E. Eberts, requiring them by a day certain to be and appear and make answer to this bill, but not under oath, an answer under oath being expressly waived.

And complainants will ever pray, etc.

FRANK HAGERMAN,

VIRGIL V. HUFF,

Solicitors for Complainants

W. M. WILLIAMS,

J. W. SUDDATH,

Of Counsel.

State of Missouri, County of Jackson, ss.

I, John B. Hill, upon oath say: That I have been appointed by the Advisory Committee on Legal Matters connected with the Reunion of the General Assembly of the Presbyterian Church in the United States of America, a member of the advisory committee within the bounds of the Synod of Missouri; that the complainants are not at the present time within the jurisdiction of this court; that I have read the foregoing bill of complaint and am familiar with the facts stated therein, and same are to my knowledge true, except as to those matters stated to be upon information and belief, and as to those matters I believe them to be true.

John B. Hill.

Subscribed and sworn to before me this 22d day of January, 1910.

My commission expires June 7th, 1910.

(Seal)

E. E. Ball.

Notary Public, Jackson County, Missouri.

SECOND AMENDMENT TO THE BILL IN EQUITY GENERAL CHURCH CASE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

JAMES M. BARKLEY, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and WILLIAM H. ROBERTS, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, Complainants. Against Hugh Hayes, G. E. C. Sharp, J. F. Shepherd, O. H. Woods, Lee Cook, V. N. Bray, Daniel G. Wade, V. B. Robertson, W. R. Slaughter, N. Logan, W. H. Billings, A. M. Todd, W. T. North, J. C. Bigham, S. A. Gammill, Lee Reese, F. E. P. Harlan, Charles O. Wall, S. A. Catlin, M. M. Hunnell, J. M. Weidemeyer, James G. Turk, E. T. Steele, A. M. Buchanan, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, C. Elmer Turner, E. S. Morrison, James C. Jenkins, John W. Walker, Heber C. Johnston, J. A. Chinn, T. W. Craven, Elisha Hall, John T. Trent, R. S. Burney, F. M. Adair, Ambrose E. Larue, John R. Kerr, Napoleon M. Irwin, Hubert Elliott, Robert Graham, Frank Ramsey, Alexander Phoenix, Samuel E. Atkins, James M. Russell, William E. Scott, James E. Shaw, John Neally, Lee McLemore, A. A. Young, Ephraim Woodrow, J. W. Manning, Erastus W. Hillhouse, S. M. Fryar, Caleb Andrews, A. Harrison Devin, James Martin, William L. Foley, Jesse William Kennedy, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybiel, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElwain, Thomas C. Newman, Samuel H. Murray, James Davis, J. Thomas Jones, James E. Eberts, John Lamar and Robert L. Foster, Defendants. No. 3546.

Amendment to Bill in Equity.

To the Honorable, the Judges of the United States Court Aforesaid:

1. In the original bill, subdivision (b) of paragraph 10 reads:

“(b) The places where such acts are taking place, the church property so claimed, and from the use of which defendants are actively attempting to exclude complainants and those represented by them, the persons there so engaged in acting being representative of the class of persons hereinbefore described, are as herein set forth.”

Another place where like acts are taking place, and other property thus claimed and from the use of which defendants and their

representatives are actively attempting to exclude complainants and those represented by them and among other persons so engaged in acting, being representatives of the class of persons hereinbefore described, are the acts, property and persons, not specifically set forth in the original bill, being as follows:

In Cass County, Missouri, the representative defendants are John Lamar and Robert L. Foster, and the property claimed by them and to the beneficial use of which complainants are entitled is described as follows: Lot seventy-five (75), Block Twenty-seven (27) in the City of Harrisonville, in Cass County, Missouri.

2. The allegations of the original bill will apply to the persons above named and described in paragraph one hereof as representative defendants with the same force and effect as if again set forth and applied to them.

Wherefore, complainants pray that the parties herein named be also made defendants to this bill; that the same relief be given as prayed for in the original bill, with special injunctive relief, temporary and permanent, against the defendants mentioned in paragraph one herein, and that Your Honors grant unto complainants a writ of subpoena directed to each of said last named defendants, John Lamar and Robert L. Foster, requiring them by a certain day to be and appear and make answer to this bill, but not under oath, an answer under oath being expressly waived.

And complainants will ever pray, etc.

FRANK HAGERMAN,

VIRGIL V. HUFF,

Solicitors for Complainants.

W. M. WILLIAMS,

J. W. SUDDATH,

Of Counsel.

State of Missouri, County of Jackson, ss:

I, John B. Hill, upon oath say: That I have been appointed by the Advisory Committee on legal matters connected with the Reunion of the General Assembly of the Presbyterian Church in the United States of America, a member of the advisory committee within the bounds of the Synod of Missouri; that the complainants are not at the present time within the jurisdiction of this court; and I have read the foregoing amendment to bill in equity and am familiar with the facts stated therein, and same are to my knowledge true, except as to those matters stated to be upon information and belief, and as to those matters I believe them to be true.

John B. Hill.

Subscribed and sworn to before me this 12th day of May, 1910.

My commission expires on the 6th day of May, 1911.

(Seal)

Eleanore C. Walton,

Notary Public, Jackson
County, Missouri.

BILL IN EQUITY, COLLEGE CASE.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, The Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler, Complainants, against Missouri Valley College, a corporation, J. W. Duvall, J. E. Cortner, A. W. Green, L. F. Clemens, S. H. McElvain, C. H. Harrison, J. E. Eberts, B. F. Garst, G. W. Freeman, T. C. Newman, William Hinton, G. P. Grimes and O. G. Dameron, Defendants.

Bill in Equity.

The complainant, The Synod of Kansas of the Presbyterian Church in the United States of America, a religious corporation organized and existing under the laws of Kansas, and a citizen and resident thereof, and the co-complainants, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler, each of whom is a resident and citizen of Kansas, bring this their bill of complaint against defendant, the Missouri Valley College, a corporation organized and existing under the laws of Missouri, with its chief office at Marshall in Saline County, and above named individual defendants, citizens of Missouri, and several of whom are citizens and residents of this division and district.

Thereupon complainants aver:

1. This suit involves a controversy wholly between citizens of different states, the value and amount of which exceeds, exclusive of interest and costs, the sum or value of \$2000. The case also arises, as hereinafter shown, under the laws and constitution of the United States.

2. The individual complainants are officers and members of, and represent, the Synod of Kansas of the Presbyterian Church in the United States of America, which Synod is composed of several hundred members, citizens and residents of Kansas, too numerous to be all conveniently made parties hereto. The interest of corporate complainant is as hereinafter more particularly set forth and stated.

3. The individual defendants are members, agents and representatives of what formerly was and is still by them claimed to be the Missouri Synod of the Cumberland Presbyterian Church in the State of Missouri, a voluntary religious organization, and is hereafter designated by the words "Missouri Synod." The words "Kansas Synod" are used herein to designate the voluntary religious organization represented by complainants.

4. The Cumberland Presbyterian Church, prior to 1881, and up to the year 1906, was an unincorporated, voluntary religious society existing under the Presbyterian form of government, having a gradation of which was unknown as the church courts, consisting of "Session," "Presbytery," "Synod," and "General Assembly," each having certain control of the others in the order

mentioned, the "General Assembly" being the highest court of the organization. The "Session" was composed of the ruling elders who are members of the church selected by the communicant members of the local congregation of that church, together with the pastor in charge of said congregation. The "Presbytery" consisted of all the ministers and one ruling elder from each church within a certain district, the ruling elder being selected from the various churches by the "Session" of each church within the district. The "Synod" was made up of three or more "Presbyteries." The "General Assembly" was composed of members elected by and from all of the "Presbyteries" of the Church in the United States. The "Session" exercises jurisdiction over a single church; the "Presbytery" over what is common to the ministers, church sessions and churches within a prescribed district; the "Synod" over what belongs in common to three or more presbyteries and their ministers, church sessions and churches; the "General Assembly" over such matters as concern the whole church. Said church has a written constitution and all their ecclesiastical standards exist in printed form. The "General Assembly" was invested, by the rules and regulations of the church, with legislative, executive and judicial authority, with power to decide all questions of law, doctrine or ecclesiastical polity. In 1881 there was situated in Missouri three synods, known as the McAdow, Missouri, and Ozark Synods of said Church, and in Kansas, one synod known as the Missouri Valley Synod of said church. In that year said four synods of said two states formed and created an "Educational Commission," which was duly incorporated under the laws of the State of Missouri in said year, and was formed for the purpose of collecting a permanent fund of not less than one hundred thousand dollars (\$100,000.00) for a permanent endowment of an institution of learning to be under the joint ownership and control of said McAdow, Missouri, Ozark, and Missouri Valley Synods of the Cumberland Presbyterian Church, or said synods and any other that might be formed in the present bounds of said synods with any other synod of said church which might become connected with the above synods in said work. This charter among other things provided: (a) Said fund was to be raised by contributions in the manner therein provided and the "Educational Commission" was required to hold in trust for the said synods all the funds and other assets of any description whatever for the said purpose; (b) as soon as it should have raised the said sum of one hundred thousand dollars (\$100,000.00) it was required to give the several co-operative synods official notice thereof; (c) such synods were then required, as provided in their charter, to elect a board of trustees for said contemplated institution of learning, each of whom should hold his office subject to the pleasure of the synod which should severally elect him; (d) when said synods elected or appointed said board of trustees, the said "Educational Commission" should turn over to said board all of the funds and property of every kind and character whatever for the purposes therein enumerated, and then cease to exist. After the forma-

tion of the said "Educational Commission," and before the consummation of its purposes, the McAdow, Missouri, and Ozark synods were combined and succeeded by the Missouri Synod of the said Cumberland Presbyterian Church, and the Missouri Valley Synod was succeeded by the Kansas Synod. * * * Thereafter, in 1888, said "Educational Commission," having concluded its labors and raised about one hundred thousand dollars, said Kansas Synod as the successor of the Missouri Valley Synod, and the Missouri Synod as the successor of the McAdow, Missouri, and Ozark Synods, proceeded to elect thirteen trustees, who, in June, 1888, incorporated themselves under the name of the Missouri Valley College under the laws of the State of Missouri, pursuant to and under the orders of the Circuit Court of Saline County, Missouri. When said trustees were elected and the corporation formed, the "Educational Commission" turned over all of said fund raised as aforesaid, to the said board of trustees of the Missouri Valley College.

5. The Presbyterian Church in the United States of America was, at all the dates hereinafter mentioned, for a long time prior thereto, ever since has been, and now is unincorporated voluntary religious society existing under the Presbyterian form of government identical with that hereinbefore set out as of the Cumberland Presbyterian Church. In the years 1903, 1904, 1905 and 1906, such action was taken by the "Presbyteries" and "General Assemblies" of the said Cumberland Presbyterian Church and of the Presbyterian Church in the United States of America, that a union was formed between said churches upon a basis that the United Church should thereafter exist and be known as the Presbyterian Church in the United States of America, and that such union was finally, in 1906, consummated and adjudged to be absolutely conclusive, final and binding upon both of such denominations by their respective assemblies. By reason of said action, the two churches became one church under the name of the Presbyterian Church in the United States of America, and as such became and is the legal successor of the Cumberland Presbyterian Church. Said union has been legally consummated and as a result thereof whatever title, legal or equitable, to any property or right to control, possess or use the same that was possessed by any of the members, judicatories or other ecclesiastical agencies of the Cumberland Presbyterian Church, passed by operation of law to the members of the corresponding judicatory or agency of the United Church, and all the members, including ministers, of the Cumberland Presbyterian Church who renounce the United Church, by such act cease to be members of such church, and such renouncing ministers thereby vacate their position as pastors and members of Presbyteries and Synods, and all such renouncing officers, members of boards or committees, or persons in other ecclesiastical positions vacate their respective offices or position and relinquish all their right in and in relation to all church property.

The "Synod of Missouri" of what was then the Cumberland Presbyterian Church in legal session at Odessa, Missouri, held upon

October 10th, 11th and 12th, 1905, pending said union and prior to its consummation, passed a resolution reciting:

"Resolved that, in view of the approaching union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, the board of trustees of Missouri Valley College be, and they are hereby instructed, directed, authorized and empowered to take all necessary and proper steps and adopt all necessary and proper measures as they may be advised, to secure the title of the college, together with the title to its endowment and all its other property, real, personal, and mixed, to the United Church, and also to secure all its rights, immunities and privileges and franchises, in its relation to the United Church, so that the institution shall preserve its integrity and maintain its policy with the right and freedom to modify and formulate its policies as to it shall seem proper and necessary for the best interests of the institution and the church under the varying vicissitudes of the future."

The "Kansas Synod" of what was then the Cumberland Presbyterian Church, met in legal session upon October 5th, 1905, and passed the same resolution.

6. The individual defendants herein were members of what was formerly the Cumberland Presbyterian Church, and after the union was consummated in 1906, they renounced the said union, refused to recognize it, and attempted to perfect an organization along with their associates in the name of the Cumberland Presbyterian Church, and now claim to be the original Cumberland Presbyterian Church. Defendant, J. W. Duvall, is the moderator of the Missouri Synod of what is thus claimed to be the Cumberland Presbyterian Church; A. W. Green is the stated clerk of the Missouri Synod thereof; J. E. Cortner, L. F. Clemens and S. H. McElvain are members of the Missouri Synod thereof. Such alleged and pretended Missouri Synod of what is claimed to be the Cumberland Presbyterian Church, has elected as trustees of the Missouri Valley College, J. W. Duvall, B. F. Garst, George P. Grimes, Charles H. Harrison, O. G. Dameron, J. E. Eberts, G. W. Freeman, T. C. Newman and William Hinton, and said trustees were by said alleged synod authorized as its agents and representatives to take any and all steps necessary in their attempt to take, obtain charge, control and possession of all the property held by said Missouri Valley College in trust. The members of the said alleged Missouri Synod of what is claimed to be the Cumberland Presbyterian Church are too numerous to be made defendants and for that reason it is impracticable and inconvenient to do so. Those who are herein named as defendants represent in their church official positions such a relation to the renunciation movement and to those engaged in it and associated with it as to fairly represent said synod.

7. Defendant, the Missouri Valley College, is a corporation duly organized and existing under the laws of the State of Missouri for the purposes herein set forth, and has by donation, bequest and otherwise, acquired and holds in trust as aforesaid the

following described real estate of the value of \$39,000.00, situated in Marshall, Saline County, Missouri; a tract of land beginning at the southeast corner of the intersection of College and Redmond Avenues, and running thence east on the south side of College Avenue aforesaid nine hundred thirty (930) feet to Conway Avenue; thence south on the west side of said Conway Avenue thirteen hundred eighty (1380) feet to Morrow Avenue; thence west along the north side of Morrow Avenue nine hundred thirty (930) feet to Redmond Avenue; thence north along the east side of Redmond Avenue thirteen hundred eighty (1380) feet to place of beginning, all in College Addition to the City of Marshall, as surveyed, as shown by the plat on file in the office of the recorder of deeds in and for Saline County, Missouri, said tract being designated thereon as College Campus. Upon such real estate, likewise acquired, owned and held, there are buildings of the value of \$127,000.00, and equipment in the way of library, books, furniture, etc., of the value of \$59,083.76. In addition thereto, said corporation has in funds likewise acquired, owned and held, investments in interest bearing securities as an endowment fund aggregating \$186,385.19. The total value of all such property is \$411,468.95. Said property all belongs to the Synod of Kansas of the Presbyterian Church in the United States of America, and the Synod of Missouri of the Presbyterian Church in the United States of America, and is held in trust for them by the defendant, Missouri Valley College. There was no dissent to the union in the State of Kansas, and there exists no organization now in Kansas claiming to be the Cumberland Presbyterian Church or any synod of the Cumberland Presbyterian Church, but the entire membership recognizes the union hereinbefore described, and complainants as their representatives.

8. The individual defendants claim to be the synod of what was the Cumberland Presbyterian Church of the United States of America, and as such claims to be the beneficial owners of all property held by the Missouri Valley College. They deny the interest therein of complainants and those whom they represent. They are setting up said claims disputing the complainants and injuring the cause of said college by depriving it of students and threatening it with expensive litigation. The said individual defendants claiming to have been elected by the Missouri Synod of what was the Cumberland Presbyterian Church as trustees of the Missouri Valley College, insist that they were by said Synod instructed to demand of the Missouri Valley College and its officers and trustees, the immediate possession and control of all the real and personal property held by the said Missouri Valley College, and if said demand was not complied with, to institute legal proceedings therefor. Pursuant to said alleged direction, they have demanded of said College and its trustees the possession of all said property and are now threatening to carry on as between themselves legal proceedings therefor and expensive litigation respecting same, denying the interest of complainants therein, whereas complainants are entitled to have their right in said property adjudicated and quieted

as against all the claims made, or that may hereafter be made by the Missouri Synod of what was the Cumberland Presbyterian Church, or any person or persons claiming by, through or under it, and to have defendants perpetually enjoined from claiming title to said realty or said endowment funds and from in any way molesting or interfering with the management of said trust property or trust funds, or the management of the said Missouri Valley College. Without relief herein complainants' rights will be wholly denied and stand wholly unrecognized.

9. The Kansas Synod, a corporation, was organized and incorporated by the voluntary association, which is complainant herein, by its representatives for the purpose of supporting public worship and education and exercising general supervision over the religious and educational affairs of the Presbyteries, churches, schools and colleges, and in holding, owning and controlling of such real property as may be vested in it, and said corporation is subject to the control of said association, and whatever property it holds or owns, it holds in trust for said association.

10. The provisions of the 14th amendment of the constitution of the United States prohibit any state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, and from depriving any person of his property without due process of law, and from denying to any person within its jurisdiction the equal protection of the law. The individual defendants claim and assert that the law of Missouri now in existence, evidenced solely by the decisions of the Supreme Court of the state in the cases of *Watson v. Garvin*, 54 Mo., 377, and *Boyles v. Roberts*, as yet unreported, is that no union of the religious organizations such as hereinbefore described is of any validity, and when made it was the duty of all officers and members of the original Cumberland Presbyterian Church to forthwith renounce, and all such as did not do so, by such failure forfeited all right to and interest in any of the property of Missouri Valley College, and that although, as here, the church tribunals in accord with the provisions of the laws of their voluntary organizations in which all the individual parties hereto had agreed, have decided that the union was valid and that such a decision by them is binding upon all the parties hereto, such decision can neither be recognized nor enforced by judicial tribunals. Said individual defendants thus claiming the law to be, threaten and propose to have it so enforced. Such a law so enforced or attempted to be enforced deprives complainants and those whom they represent of the equal protection of the law, takes their property without due process of law, and unreasonably abridges their privileges and immunities as citizens of the United States. They therefore invoke the protection of the constitutional provisions aforesaid. In addition thereto, the force of such provisions was to give complainants the right and privilege of belonging to religious organizations and agreeing, as was done here, that the decision of the church tribunals should be binding as to when and under what circumstances a union could be perfected of two churches.

Forasmuch as complainants have no adequate remedy according to the course of the common law, and can only have relief in a court of equity where such matters are peculiarly cognizable, they pray that: This, their bill, be taken as one on their own behalf and on behalf of all the members and officers constituting the Synod of Kansas of the Presbyterian Church in the United States of America, and as they can have no adequate remedy at law, the defendants be required to show why complainants should not have the relief here prayed and may make a full disclosure and discovery of all matters aforesaid and according to their knowledge and information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged (but not under oath, an answer under oath being expressly waived); the defendants, except the Missouri Valley College, and all those claiming under them, be adjudged to have no right or title in or to said real estate, in law or equity and no right or title, legal or equitable, to said trust funds, and no right to the control or possession thereof; the Missouri Valley College be adjudged to be vested with the legal title to all said property, real, personal, in trust for the benefit of complainants; the defendants (except the Missouri Valley College) and every person claiming under them, be forever estopped, debarred, and temporarily and permanently enjoined from in any way claiming or asserting any title thereto, or in any way interfering with, or attempting to interfere with, manage or control said property, real or personal, or the management or control of said Missouri Valley College as a corporation, or the election of its officers or trustees; the establishment and enforcement of the full and equitable rights of complainants and further relief as to the court in equity and good conscience may deem proper.

And your orators will ever pray, etc.

FRANK HAGERMAN, *Solicitor for Complainants.*

United States of America, Western Division of Western District of the State of Missouri, ss:

On this 13th day of November, 1909, before me personally appeared Samuel Garvin, one of the complainants above named, being by me duly sworn upon his oath states that he is one of the complainants and a member of the Synod of Kansas of the Presbyterian Church in the United States of America, and is familiar with its business and interests and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same are true of his own knowledge, except a few details which are stated on information and belief, and as to those matters he feels fully informed and verily believes that they are all true.

Samuel Garvin.

Subscribed and sworn to before me this 13th day of November, 1909.

My commission expires June 7th, 1910.

(Seal)

E. E. Ball,

Notary Public in and for
Jackson County, Missouri.

Barkley et al., Complainants, vs. Hayes et al., Defendants. No. 3546.

Synod of Kansas of the Presbyterian Church, in the U. S. A., Complainants, vs. Missouri Valley College et al., Defendants. No. 3540.

EVIDENCE VOLUME I.

I.

Stipulation No. 1.

Upon the 28th day of April, 1913, the parties filed this stipulation.

(Captions same as above.)

Stipulation.

In addition to such further material and competent evidence as either party may offer, it is agreed that the matters herein set out and referred to, shall without further formality or proof, be considered and deemed as proven and true and treated as evidence in this cause; subject, however, to any objection going to the competency or materiality thereof or to any portion thereof. It is further understood that this stipulation does not affect any other or former stipulations as to evidence to be offered in this cause, but is simply in addition to matters stipulated for as evidence therein.

1st. The description of the property in controversy is as alleged in the complaint and answer.

2nd. The property in controversy shall be deemed to have been conveyed originally as alleged in the pleadings, unless either party shall introduce evidence to the contrary, and sufficient to establish the contrary.

3d. The defendants, Alonzo M. Buchanan, L. F. Clemens, J. W. Duvall, R. L. Layman, Albert W. Green, Samuel McElvain, James M. Russell, Edward R. Duggins, Thomas C. Newman, Samuel H. Murray and James Davis were ministers of the Cumberland Presbyterian Church at May 25th, 1906, and as such ministers were members of its presbyteries and of the Synod of Missouri thereof, who have denied and are yet denying the validity of the union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America and now belong to and are proper representatives of organizations which they claim are the Presbyteries and the Synods of Missouri of the Cumberland Presbyterian Church, and they and each of them are citizens and residents of the State of Missouri.

4th. The remaining defendants and those they represent were members of and some of them officers of the local congregations of the Cumberland Presbyterian Church in the State of Missouri, using the respective properties at May 25th, 1906, and some of them trustees under the deeds as alleged in the complaint and an-

swer, who have denied and are yet denying the validity of the union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, and now compose the respective local congregations being that which they claim to be the original Cumberland Presbyterian Church, mentioned in the respective deeds under which the respective properties are held, and as such claim the title and the beneficial use of the respective properties in controversy, and they and each of them are citizens and residents of the State of Missouri.

5th. The trust funds and property in controversy, exist as alleged in the pleadings and on the 25th day of May, 1906, William H. H. Stephens, William K. Howe, Eugene E. Stringfield, William R. Russell, Luke H. Moss, George Ward, Wm. D. Maxwell, Robert Onstott, Bruce Mitchelhill, John C. Cobb, G. W. Shaw, J. R. Campbell and M. B. Shipp were trustees in possession of the respective trust funds as alleged in the complaint and answer, as well also the properties mentioned in the same connection, and that said named parties are now in possession of said trust funds and properties; and said trust funds and properties were held on said 25th day of May, 1906, for the respective bodies of the Cumberland Presbyterian Church as alleged in the pleadings, and the bodies mentioned in the complaint as the successors to the bodies therein alleged to be the original beneficiaries are the bodies which the alleged united church, under the name of the Presbyterian Church in the United States of America, in pursuance of the alleged union has designated as such successor beneficiaries. That none of the parties above mentioned as being in possession of said trust funds and properties have been made parties to this action, but all of them are among the parties alleged in the answer to be indispensable parties to this action, and each and every one of the same are residents and citizens of the State of Missouri. And L. F. Clemens, J. Thomas Jones, Albert W. Green, Samuel H. McElvain and Alonzo M. Buchanan are proper representatives defendants claiming the beneficial use of said trust funds for their respective organizations alleged in the pleadings to have been at that date, beneficiaries of said trust funds and properties, and who, having denied the validity of the said union between the two churches, now are members of organizations of the Cumberland Presbyterian Church and which they claim to be identical with the organizations which were at the time of the alleged union beneficiaries to said trust funds and properties.

6th. There are parties alleged in the answer to be necessary and indispensable parties to this action, who are not made parties to the same. The said persons so alleged and named in the answer were members and some of them officers of the various local congregations of the Cumberland Presbyterian Church, in the State of Missouri, on the 25th day of May, 1906, and some of them trustees under the deeds, all as alleged in the answer; as alleged in the answer, they have since asserted the validity of the union of the Cumberland Presbyterian Church and of the Presbyterian Church

in the United States of America, and are now members and some of them officers and some of them also trustees under the deeds for what they claim is the united church, and the local congregations thereof, under the name of the Presbyterian Church in the United States of America and each of said named persons, is representative in his respective congregation of that class of persons, who on said 25th day of May, 1906, were members of the same local congregation of the Cumberland Presbyterian Church with him, and who accepted and asserted the validity of the union and now belong to the alleged united church and the respective local congregations thereof, in the State of Missouri, under the name of the Presbyterian Church in the United States of America. That said named persons together with those they represent are each and all citizens and residents of the State of Missouri. That William H. H. Stephens, William K. Howe, Eugene E. Stringfield, William R. Russell, Luke H. Moss, George Ward, Wm. D. Maxwell, Robert Onstott, Bruce Mitchelhill, John C. Cobb, G. W. Shaw, J. R. Campbell and M. B. Shipp, among the parties names as necessary and indispensable parties in the answer as aforesaid are likewise trustees and representatives of certain presbyteries and other bodies as alleged in the pleadings, in possession of certain trust funds and other properties as alleged in the pleadings, and as hereinbefore fully set out and explained in paragraph numbered 5 hereof.

7th. The possession of the respective properties so far as alleged in the pleadings is as alleged.

8th. It is agreed that upon the trial of this cause, any part of the printed abstract of record in *Hayes et al. v. Manning et al.*, or of the printed abstract of record in *Missouri Valley College et al. v. Guthrie et al.*, appealed from the Circuit Court of Saline County, Missouri to the Supreme Court of the State of Missouri, subject to any objection for competency or relevancy, may without further formality or proof be read in evidence, by either party. Likewise as to the case of the State of Tennessee on the relation of *J. W. Zarecor et al. v. W. A. Province et al.*, going to the Supreme Court of the State of Tennessee.

9th. This and other stipulations heretofore filed and the documentary evidence to be introduced herein shall be in printed form, the plaintiffs advancing the money for the portion thereof which is produced by them, and the defendants for the portion offered by them. In case of an appeal, the same may, with the consent of the appellate court, be used in lieu of reprinting above, on condition that the party appealing shall first refund to the other party the amount that he has advanced below in printing the said portion of the record.

10th. Plaintiff shall forthwith print in one volume said stipulations, their bill and any amendment thereto and the part of the documentary evidence offered by them. Defendants shall forthwith print in a separate volume the part of the documentary evidence offered by them. This separate volume shall be paged as a continuation of plaintiff's volume, so they may be bound together.

11th. Cases numbered 3540 and 3546 shall, for the purposes of trial, be consolidated, and any portion of the evidence and stipulations may be considered as offered in each case so far as same is material thereto.

(Signed.)

FRANK HAGERMAN,
W. M. WILLIAMS,
J. W. SUDDATH,
VIRGIL V. HUFF,
Attorneys for Plaintiffs.

W. C. CALDWELL,
S. B. LADD,
T. B. ALLEN, and
ROBERT M. REYNOLDS,
Attorneys for Defendants."

II.

Stipulation No. 2.

Upon the 10th day of January, 1913, the parties signed a stipulation, reading thus:

(Omitting caption.)

STIPULATION.

In addition to such other further material and competent evidence as either party may offer, it is agreed that without further formality, or the use of the original documents, either party may, subject to any objection going into the competency or materiality of the proof, offer in evidence:

1. Any part of the printed abstract of record in *Boyles v. Roberts*, 222 Mo. 613, and any part of the bill of exceptions in *Hayes et al. v. Manning et al.*, and *Missouri Valley College et al. v. Guthrie et al.*, in the Circuit Court of Saline County, Missouri;

2. Any part of these printed volumes: Cumberland Presbyterian Digest, by J. V. Stephens; Digest of the Presbyterian Church of the United States, by Alexander; Digest of Presbyterian Church in the United States of America, by Moore; Digest of the Presbyterian Church in the United States of America, by Roberts.

3. Any part of any printed minutes of any Presbytery Synod or General Assembly of the Presbyterian Church of the United States of America, and of the Cumberland Presbyterian Church.

4. Any part of the printed books entitled "The Constitution of the Presbyterian Church in the U. S. A.", purporting to have been published by the Philadelphia Presbyterian Board of Publication and Sabbath School Work; the "Confession of Faith of the Cumberland Presbyterian Church," both revised and unrevised, published by the Board of Publication of the Cumberland Presbyterian Church, at Nashville, Tennessee, and "The Constitution of

the Presbyterian Church in the United States," published by the Presbyterian Committee of Publication at Richmond, Virginia.

5. Any part of the printed pamphlets, one called "Documentary Evidence," by John M. Gaut, and the other "Successive Steps," by W. C. Caldwell.

6. The deeds described in the pleadings shall be deemed sufficiently proven and described. Either party may, however, in lieu of any such description of any deed, offer a certified copy thereof.

7. Any certified part of the transcript of the record going to the Supreme Court of Tennessee from the chancery court at Nashville, Tennessee, in the case of the State of Tennessee at the relation of *J. M. Zarecor et al. v. W. A. Provine et al.*

Dated January 10, 1913.

VIRGIL V. HUFF,
FRANK HAGERMAN,
Solicitors for Complainants.

W. C. CALDWELL,
R. M. REYNOLDS,
THOS. B. ALLEN,
SANFORD B. LADD,
Solicitors for Defendants.

III.

Evidence Offered Under Paragraph 1 of Stipulation No. 2.

The plaintiffs offer the following evidence under paragraph 1, of stipulation No. 2.

(a) From the printed abstract of record in *Boyles v. Roberts*, 222 Mo. 613.

The plaintiffs offer no documents from this record.

(b) From the abstract of the record in *Hayes v. Manning*, Supreme Court of Missouri, October Term, 1912, No., the following portions:

1. REPORT NO. 2 OF THE COMMITTEE ON JUDICIARY AND OVERTURES. Minutes of the Synod of Missouri of the Cumberland Presbyterian Church, 1902, page 31, beginning at the words, 'Report 2,' in line 42, page 282, said abstract, and ending with the signatures 'E. D. Pearson and C. L. Keaton,' in lines 23 and 24, page 283, thereof, which reads as follows:

"Report 2. Your committee, to whom has been referred the petition of the New Lebanon Presbytery, asking you to memorialize the General Assembly to take steps to open up correspondence with the General Assembly of the Presbyterian Church of the United States of America, and to appoint a committee to meet and confer with a like committee from said Presbyterian General Assembly, looking to federation or union with said Presbyterian Church, would respectfully report that we recommend the spirit of the pe-

tion, and that we hail with delight the spirit of union now existing between these two great churches, which spirit we regard as begotten by the presence of the Living God among us. And it is to us an omen to be hailed with delight, that the differences between these two great branches of the Church are disappearing, giving promise of an ultimate union that shall promote glory of God and the salvation of the world.

Your Committee, therefore, most respectfully recommend that you do memorialize the General Assembly to adopt such measures and appoint such agencies as may seem desirable for the accomplishment of these ends, under the guidance of the Holy Spirit, to the honor of Christ, and to the spread of His glorious Kingdom, thus extending a fraternal hand to our brethren of the Presbyterian Church of the United States of America, hoping that ultimately the mother and the daughter may clasp hands in oneness of effort for the glory of God.

We deplore any form of agitation on this subject that might produce dissension or that might distract the attention of the church from the essential principles involved, or may magnify into "issues" things that are only of secondary consequence or moment.

We recommend to our people a calm and dignified consideration of all the important matters involved in this subject.

E. D. Pearson,
C. L. Keaton."

2. RESOLUTION FAVORING UNION. Minutes Synod of Missouri, Cumberland Presbyterian Church, 1903, beginning at the word 'Resolution' in line 45, page 265, said record, and ending with the words 'W. L. Darby,' in line 12, page 266, thereof, which reads as follows:

"RESOLUTION.

It is the sense of this Synod that we note with great pleasure the manifest tendency toward union in the Presbyterian family.

We are especially pleased to hear of the cordial relation existing between the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church. And it is most gratifying to this Synod that the committees appointed by these bodies looking to union have, in St. Louis, recently had a meeting so delightful in its fellowship, and so unanimous in the agreements reached as a basis for further progress.

It is our sincere hope that the plans already under way shall issue in results, both honorable and satisfactory to both denominations.

R. T. Caldwell,
W. L. Darby."

3. BAITY RESOLUTION. Minutes Synod of Missouri of the Cumberland Presbyterian Church, 1905, beginning at line 33, page 270, said record with the words 'The following resolution

was adopted,' and ending with line 3, page 271, with the words, 'G. P. Baity,' and which reads as follows:

The following resolution was adopted:

"RESOLVED that, in view of the approaching union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, the board of trustees of Missouri Valley College be, and they are hereby empowered to take all necessary and proper steps, and adopt all necessary and proper measures, as they may be advised, to secure the title of the college, together with the title to its endowment and all its other property, real, personal and mixed, to the united Church, and also to secure all its rights, immunities and privileges and franchises, in its relation to the united Church, so that the institution shall preserve its integrity and maintain its policy with the right and freedom to modify and formulate its policies as to it shall seem proper and necessary for the best interests of the institution and the church under the varying vicissitudes of the future.

G. P. Baity."

4. ANSWER TO PROTEST CONCERNING BAITY RESOLUTION. Minutes Synod of Missouri, of the Cumberland Presbyterian Church, 1905, beginning with line 4, page 273, said record, with the words, "Answer to Protest," and ending with line 43, page 274, with the words, 'J. H. Tharp, Committee,' and reads as follows:

"Answer to Protest.

To the Synod of Missouri:

Your committee appointed to answer the protest of L. F. Clemens and others spread your records at this session, relating to the resolution adopted by your body in regard to the Board of Trustees of Missouri Valley College, would submit the following as a sufficient answer for the present to said protest.

The resolution referred to in said protest is simply a suggestion and direction of this body to the Board of Trustees to look after the interests and property of the College and see that the title is not clouded and that the property is secured, unclouded to the united church. This was simply a plain duty of the Synod, as every Presbytery and member of the church who respects the judicatures of the Church must admit.

The protest, as your committee after careful perusal thereof firmly believe, is wholly impertinent to the matter of the resolution, since it does not condemn the precautionary care for the properties of the college, but merely protests with emphasis against the union of the two churches. If it could be admitted that union was a good thing it would not at all argue that the United Church ought not to have a good title to the property of each of the churches.

The protest, as we understand it, is but another presentation of the matter contained in the protest of the anti-unionists in the

late Assembly at Fresno. The General Assembly considered that protest and held it without validity and answered the same as appears from the minutes, at page 81, *et seq.* The ruling of the Assembly is the law of the matters presented in the protest now under consideration, and binds the protestants, as well as the other members of the church.

The preceding would be sufficient answer, but your committee feel that your body ought to correct a misconstruction of a clause in the Twenty-fifth section of the Constitution, much relied upon by the protestants. That clause is, "and the jurisdiction of these courts is limited by the express provisions of this section of the constitution." It is unnecessary to attempt a full construction of that clause. It is sufficient to show, if we can, that the protest has misconstrued it."

The protest says: "Now, is there an express provision of the constitution empowering these two churches to form this union? If so, where is that provision in the constitution?" The gravamen of this argument is that the courts of the church can do nothing unless there is an express provision granting power for the specific thing.

Your committee would inquire by what authority Missouri Synod promoted the building, endowment and maintenance of Missouri Valley College? Where, in the constitution, "is the express provision" authorizing, allowing or even tolerating any such action by Missouri Synod?

McGee Presbytery for years promoted and patronized McGee College. Where is the express provision in the constitution authorizing any such act? Yet, for fifty years that act has been unquestioned, and who questions the right and the duty of Missouri Synod to foster and patronize Missouri Valley College? The mind of anyone acquainted with the history of the church will readily supply many a like striking incident.

It may be worthy of consideration to remark that after the union, Missouri Valley College, its endowment and property will be trust property, just as it is today, devoted to the same purposes, since the plan of union so provides.

"The institutions of learning together with the endowment and other property, real and personal, owned by them, which are now under the control of the Cumberland Presbyterian Church, shall remain in charge and be controlled by the Board of Trustees, or other management respectively, now in charge of such institutions, endowment and property, or by their successors similarly appointed or elected; and no greater control of such institutions, their property or affairs shall be exercised by the General Assembly, or other ecclesiastical court or body, of the united Church."

The same trustees will administer the property for the same objects, with the same intent, to accomplish the same grand results. The name of the institution will not be changed, its organization in no wise affected, and the only change will be in the mere name of the patronizing ecclesiastical body, and that body

will be the Synod, occupying the same territory, adhering to the same rites and practices, teaching the same great doctrines and fostering the same great benevolences and humanities. A change in the name of the Synod will in no wise affect the character of the work of the college.

The accomplishment of union under the plan and action of the General Assemblies of the two churches operates to carry the college and its properties to the new Church and vests the same patronizing duties in the successors of the present patronizing Synods as they respectively and collectively now have and enjoy.

Ben Eli Guthrie, E. D. Pearson, J. H. Tharp, Committee."

5. RESOLUTION, Minutes Synod of Missouri of the Cumberland Presbyterian Church, 1905, pp. 53 & 54, beginning at line 3, page 275, with the words, 'The following preamble,' and ending with line 28, page 275, with the words, 'under the care of this Synod, and which reads as follows:

"The following preamble and resolutions were adopted:

WHEREAS, the General Assembly of our Church, in session in the City of Nashville, Tenn., in the year 1903, did appoint a committee on Fraternity and Union to confer with like committees from other churches holding similar doctrines and policies, and

WHEREAS, that committee did after much care, prayer and conference with a committee from the Presbyterian church in the U. S. A., submit to the General Assembly in session in the City of Dallas, Texas, in the year 1904, a basis of union, which after two days of earnest and free discussion was submitted to the presbyteries for their consideration, adoption or rejection, and WHEREAS, the General Assembly in session in the City of Fresno, California, in the year 1905, did find and declare that the overture had been carried by the constitutional majority and in the constitutional manner, and so recorded the vote of the Presbyteries.

THEREFORE RESOLVED, that it is the sense of this Synod, that the good of the cause and the peace of the church will be subserved by the acquiescence of the whole church in these steps and this decision of the legal authorities of the denomination, and we therefore recommend to all the Presbyteries under our care that they become subject to the deliverances of our highest court and submit to its decisions in a dignified and Christian manner.

RESOLVED, Second, that the Stated Clerk of this Synod, be directed to transmit, in his official capacity, this paper to the Stated Clerk of all the Presbyteries under the care of this Synod."

6. RESOLUTION, Minutes of the Missouri Synod 'A,' Presbyterian Church in the United States of America, 1906, page 718, beginning with line 18, page 276, with the words, 'The following preamble,' and ending with line 41, page 276, with the words 'and unity of the church,' which reads as follows:

The following preamble and resolutions were adopted:

WHEREAS, since the last session of this Synod the union of the Cumberland Presbyterian Church, and the Presbyterian Church in the United States of America has been legally and properly consummated; and

WHEREAS, By the action of the Assemblies of the said churches, the proper name and title of this body is the Synod of Missouri A. of the Presbyterian Church in the United States of America.

RESOLVED, Therefore, that said name and title be approved and adopted and respected as the proper name and designation of this Synod.

RESOLVED, Further, that this Synod hereby does most heartily approve and commend the action of the Cumberland Presbyterian Assembly of 1906 at Decatur, Illinois, and also the action of the Assembly of the Presbyterian Church, U. S. A., at Des Moines, Iowa, and their respective predecessors on the subject of union.

RESOLVED, Further, that all our ministers, Presbyteries, Sessions and congregations be requested and exhorted to respect and obey the said action of the said Assemblies, and to submit thereto and in all things to conform their action thereto, and heartily and cheerfully co-operate in the maintenance of said Union, seeking at all times the peace and unity of the church."

7. RESOLUTION, Minutes of the Missouri Synod 'A,' Presbyterian Church in the United States of America, 1906, page 44, beginning with the line 47, page 278, with the words, 'In conformity with,' and ending with the line 11, page 279, with the words, 'W. H. Johnston, Clerks,' which reads as follows:

"In conformity with the action of this Synod taken on Item No. 8 of Report No. 1 of the Committee on Judiciary and Overtures the Synod passed its adjourning order as follows:

RESOLVED, That this Synod does now adjourn subject to the provision of the enabling acts for the consolidation of the Synods, to be adopted by the General Assembly of the United Church, meeting at Columbus, Ohio, May 16, 1907, and also subject to any other necessary acts of said General Assembly. Prayer by Rev. O. D. Allen.

W. T. Baird, Moderator.
J. W. Mitchell,
W. H. Johnston, Clerks."

8. COMPACT OF 1810, beginning with line 17, page 183, with the words, 'The Formation of,' and ending with line 47, page 183, with the words 'pp. 11, 12,' which reads as follows:

"The formation of Cumberland Presbytery took place on February the 4th, 1810, at which time those participating in the organization entered in to the following compact:

"In Dixon County, State of Tennessee, at the Rev. Samuel McAdow's, this 4th day of February, 1810—

"We, Samuel McAdow, Finis Ewing, and Samuel King, regularly ordained ministers in the Presbyterian Church against whom no charge either of immorality of heresy, has ever been exhibited before any of the church judicatures having waited in vain for more than four years, in the meantime petitioning the General Assembly for a redress of grievances, and a restoration of our violated rights, have agreed, and do hereby agree and determine, to constitute into a Presbytery, known by the name of the Cumberland Presbytery, on the following conditions:

"All candidates for the ministry who may hereafter be licensed by this Presbytery, and all the licentiates or probationers, who may hereafter be ordained by this Presbytery, shall be required, before such licensure and ordination, to receive and adopt the Confession and Discipline of the Presbyterian Church, except the idea of fatality, which seems to be taught under the mysterious doctrine of predestination. It is to be understood, however, that such as can clearly receive the Confession without an exception shall not be required to make any. Moreover, all licentiates, before they are set apart to the whole work of the ministry, or ordained, shall be required to undergo an examination on English Grammar, Geography, Astronomy, Natural and Moral Philosophy and Church History. It will not be understood that examinations on experimental religion and theology will be omitted. The Presbytery may also require an examination on all, or any part, of the above branches of literature, before licensure, if they deem it expedient. From the Circular Letter, pp. 11, 12."

9. CIRCULAR LETTER OF 1810, beginning line 1, page 184, with the words, 'At the first regular,' and ending with line 36, page 184, with the words, 'D. p. 19,' and which reads as follows: "At the first regular meeting of Cumberland Presbytery, held in March, 1810, it was "ordered that Messrs. Samuel M'Adow, Finis Ewing, Ephraim M'Lean, James B. Porter, and Young Ewing, or a majority of them draw a Circular Letter, as soon as they can, which is to be carefully examined, and superintend the printing of a thousand copies to be distributed under the direction of Presbytery." From Minutes of Cumberland Presbytery, March 1810—D p. 1.

2. Circular LETTER of 1810.

'A CIRCULAR LETTER.'

Addressed to the Societies and Brethren of the Presbyterian Church:

Recently under the care of the Council by the Late Cumberland Presbytery; in which there is a Correct Statement of the Origin, Progress, and Termination of the Differences Between the Synod of Kentucky and the Former Presbytery of Cumberland—D. p. 2.

* * * * *

As to the second point, the Synod had suggested that the candidates could have adopted the "Alcoran" in the same manner they adopted the Confession of Faith. This was acknowledged to be literally true, but not applicable in the case of the young men; for the Presbytery contended that the very act of the candidates' receiving the Confession at all, was an evidence that they esteemed it above all other human creeds, and the exception, or condition, in which they were indulged, was only designed to meet some conscientious scruples, in points not fundamental or essential, particularly the idea of fatality, that seemed to some of them to be there taught, under the high and mysterious doctrine of predestination.—D., p. 9.

* * * * *

We must add that we have it in view as a Presbytery to continue or make another proposition to the Synod of Kentucky or some other Synod for a reunion. If we can obtain it without violating our natural and scriptural rights it will meet the most ardent wish of our hearts. If we cannot, we hope to be enabled to commit ourselves and our cause to Him who is able to keep us.—D., p. 18.

WHEREAS, This Cumberland Presbytery have made every reasonable effort to be reunited to the general Presbyterian Church; and, whereas, from the extent of our bonds, the local situation of our members, their number, etc., it is inconvenient to do business in but one Presbytery; and whereas, the constitution of a Synod would be desirable, and we trust, of good consequences in various respects, and particularly as a tribunal having appellant jurisdiction.—From Minutes of Cumberland Presbytery, April, 1813,—D., p. 19."

10. ATTEMPTS AT UNION, beginning with line 21, page 186, with the words, 'Attempts at Union,' and ending with line 11, page 187, with the words, 'November, 1812,' and reads as follows:

"8. ATTEMPTS AT UNION.

BY THE PRESBYTERY.

We would just add, that we have it in view as a Presbytery to continue or make another proposition to the Synod of Kentucky or some other Synod for a reunion. If we can obtain it without violating our natural and scriptural rights it will meet the most ardent wish of our hearts. If we cannot, we hope to be enabled to commit ourselves and our cause to Him who is able to keep us.—D., p. 18. From the Circular Letter of 1810.

Whereas, This Presbytery, in their, "Circular Letter" said it was their intention, as a proper time, to apply to the Synod of Kentucky, or some other Synod, for a reunion, but, on reflection finding that the judicatures most proper to apply to were the Presbytery of Muhlenburg and West Tennessee; and whereas, our Presbytery have made such application to the above church judicatures, which application has not been acceded to on their part; and whereas, instead of manifesting a spirit of reconciliation our brethren com-

posing a majority of the above Presbyteries have judicially shut the door against the two bodies communing together;

Resolved, That Messrs. Bell and Porter are hereby authorized to inform said committee that this Presbytery agree to name a committee to meet a like Committee appointed by the West Tennessee and Muhlenburg Presbyteries, conjointly, at any time and place said Presbyteries will appoint, in order to confer on the subject of reunion and other matters relative to that harmony that should exist among the members and people of Jesus Christ.—From Minutes Cumberland and Presbytery, Oct., 1811.

Resolved, therefore, as the opinion of this Presbytery, that we have in substance complied with our declarations in the "Circular Letter" on the subject of reunion.

2. That, as the opinion of this Presbytery the Muhlenburg and West Tennessee Presbyteries have closed any prospect, at present, of a reunion between the two bodies.

3. That this Presbytery have always been, and expects always to be, ready and willing for union with the general Presbyterian Church, on Gospel principles.

The Presbytery unanimously adopted the above resolutions.—From Minutes of Cumberland Presbytery, November, 1812."

11. CUMBERLAND SYNOD CONSTITUTED DEFINES ITS POSITION, beginning with line 44, page 196, with the words, 'The Cumberland Synod,' and ending with the line 18, page 197, with the words, 'D., pp. 21, 22,' and reads as follows:

THE CUMBERLAND SYNOD.

"These Presbyteries, in October, A. D. 1813, met in the Beech Church, in Sumner County, Tennessee, and constituted a Synod."

From Preface to Confession of Faith, 1883.

At these sessions of Synod, the brief view of the doctrines and disciples, etc., of the Cumberland Presbyterian Church, in Woodward's Edition of Buck's Theological Dictionary, was unanimously approved of, and directed to be published in that work, and read as follows:

Doctrines.—It has been already observed, that the Presbyterian Confession is their (Cumberland Presbyterians) Confession, "except the idea of fatality." But as some may think this is too indefinite, it may be proper here to state explicitly all the essential doctrines or tenets they hold.

* * * * *

They dissent from the Confession—in; 1st. That there are no eternal reprobates. 2nd. That Christ died, not for a part only, but for all mankind. 3rd. That all infants, dying in infancy, are saved through Christ and sanctification of the Spirit. 4th. That the Spirit of God operates on the world, or as co-extensively as Christ has made atonement, in such a manner as to leave all men inexcusable. D., pp. 21, 22."

12. ADOPTION OF CONFESSION OF FAITH, beginning with line 1, page 185, with the words, 'Adoption of,' and ending with line 10, page 185, with the words, 'D. p. 20,' and reads as follows:

"ADOPTION OF CONFESSION OF FAITH BY THE SYNOD OF 1814.

CONFESSION OF FAITH.

"At this same meeting of Synod, too, a committee was appointed to prepare a Confession of Faith. The next year, A. D., 1814, at Sugg's Creek Church, Wilson County, Tennessee, the report of the Committee was presented to Synod, and the revision of the Westminster Confession of Faith, which they presented was unanimously adopted as the Confession of Faith of the Cumberland Presbyterian Church, 1883.—D., p. 20."

13. GENERAL ASSEMBLY ORGANIZED, beginning with line 13, page 185, said record with the words, 'General Assembly,' and ending with line 18, page 185 thereof, with the words, 'D. p. 25,' and reads as follows:

"GENERAL ASSEMBLY.

"Subsequently the formation of the General Assembly took place. This judicature, at its first meeting, A. D. 1829, at Princeton, Kentucky, made such changes in the Form of Government as were demanded by the formation of this new court." From Preface to Confession of Faith, 1883,—D., p. 25."

14. RESOLUTION OF 1860, beginning with line 12, page 187, said record, with the word, 'By the General Assembly,' and ending with line 20, page 187 thereof, with the word 'adopted,' and reads as follows:

"BY THE GENERAL ASSEMBLY OF THE C. P. CHURCH.

Resolved, That, while we are ready to reciprocate fraternal feelings alike with all Christians, yet seeing that the great Presbyterian family embrace alike the same church government and that in their oral addresses they are doctrinally converging to the same standpoint, the sovereignty of God and the agency of man both alike exercised and secured in the salvation of the sinner, we cherish the fond hope that the day is not far distant when the entire family shall be represented in one General Assembly. Adopted 1860, p. 29."

15. ATTEMPTED UNION WITH THE PRESBYTERIAN CHURCH IN THE UNITED STATES, beginning with the words, 'Rev. T. D. Witherspoon,' line 24, page 187, said record, and ending with line 17, page 190 thereof, with the words, 'been discharged,' and reads as follows:

"Rev. T. D. Witherspoon, the delegate from the Presbyterian Church in the United States, was introduced by Rev. C. A. Davis,

D. D., and addressed the General Assembly upon the subject of his mission, which was responded to in an appropriate manner by the Moderator.

Thereupon, the following resolution as amended, was adopted:

Resolved, That a Committee, consisting of ministers, S. G. Burney, D. D., B. W. McDonald, D. D.; Lee Roy Woods, J. B. Logan, P. G. Rea; and Elders A. J. McLain and Win. H. Holliday, be appointed to prepare a suitable minute for the action of this Assembly on the subject of organic union with the Presbyterian Church, as brought before this body by Rev. D. T. Witherspoon, the Corresponding Delegate from the General Assembly of said church, and Rev. C. A. Davis, D. D., the delegate from our last General Assembly to that body—1867, p. 16—D., pp. 237, 238.

Said committee made a report, part of which is as follows: "It may be truthfully said that the points of agreement between the two churches are numerous and vital; or rather the points of disagreement are but few and these all confessedly among the non-essentials of our holy religion.

The government of the two churches is substantially the same, both strictly Presbyterian, having the same judicatories, each with its functions and limitations clearly specified; both giving utterance to the same great conservative principles touching the spirituality and sacredness of the church and disclaiming the legitimacy of all alliance between ecclesiastical and civil governments; having the same orders of ministers and the same forms of induction into their sacred office; the same forms of religious worship, the same faith and practice in relation to the authority, nature and designs of the sacraments of Baptism and the Lord's Supper.

The formulas of faith are very similar, each church possessing, it is mutually conceded, all that is vital to the Christian system. The modes of presenting the doctrines of the Cross by the ministers of the two churches are generally so similar that even the well informed often fail to discover any difference. In revivals of religion their ministers and members often co-operate with great harmony and success. All these points of agreement, and the number might be increased, tend to stimulate to organic union. There are nevertheless points of difference which make us in some respects two people in something besides the name.

It is a historic fact which lives upon the records of both churches, and which neither could suppress if it would, that the founders of the Cumberland Presbyterian Church, when receiving ordination at the hands of the mother church, did except the doctrine of fatality or unconditional election and reprobation, as it was believed to be taught in the Westminster standards. The doctrine of divine decrees as set forth in those standards was regarded by them as high mystery which they modestly declined to accept. This doctrine, as then expounded by the Presbyterian Church, came to be considered by our fathers as something more than a mystery and in the compilation of their Confession it was excluded from their creed.

Without prejudging the question, it is admissible to state, that in most, if not all the great leading churches of Christendom, the extremes of Calvinism and Arminianism are found to exist, and that the elements of these great antagonistic systems are more or less active; yet these churches tolerating these doctrinal differences for the sake of the advantages of organic union, remain one and undivided.

Their chief bond of union is neither doctrinal unity nor ritualistic harmony, but it is simply the devotion to their church organization and a common inheritance of the historic treasures of the past. This bond, by asserting its dominion over the impulses of heart rather than over the frigid, unsympathetic dictates of an inexorable logic, proves too strong to be severed by doctrinal differences.

But the two churches in question certainly do approach each other very nearly; and if the two were to-day made organically one, without the modification of a single sentence in either Confession of Faith there would still be more doctrinal unity and more real homogeneousness than actually exist in some churches whose unity is their proudest boast.

Already agreeing in fundamentals, as is mutually conceded, if they can consent to mutual concession and toleration in non-essentials, charity in all things, then there can not be only organic union, but thorough homogeneousness and earnest co-operation throughout the whole body.

Without mutual concession it is presumed that the union is out of the question; for it is not understood that either church is dissatisfied with itself.

Without toleration, the body would be convulsed with strife and without homogeneousness it would be wanting in an essential element of effective evangelism, and the organic union would be rendered nearly valueless. This Assembly will not undertake even to indicate the inestimable blessings to the Church and to the world consequent upon such a union; and certainly will not be slow in acceding to any terms of union which are in themselves not inconsistent with justice and honor and their clear convictions of truth.

* * *

In conclusion the Committee recommend the appointment of a committee of six, to confer with a similar committee appointed by the Assembly of the Presbyterian Church, at such times and places as the two committees may determine, and to report the results of this conference to the next Assembly.

S. G. Burney,
Lee Roy Woods,
B. W. McDonald,
P. G. Rea,
W. H. Holliday.

The foregoing report was concurred in and the following Committee of Conference was appointed, according to the recommendation; S. G. Burney, D. D., Reuben Burrow, D. D., A. J. Baird, D. D., Milton Bird, D. D., Lee Roy Woods and J. W. Poindexter—1867, p. 34.

The Committee appointed by the General Assembly of 1867 to confer with a committee appointed by the General Assembly of the Presbyterian Church in the United States, in regard to organic union, respectfully submit to your Reverend Body the following report: * * *

Believing that organic union on terms acceptable and honorable alike to both churches would be eminently to the glory of God in the promotion of the cause of our common Christianity, your Committee frankly proposed, in the spirit of fraternal concession, the surrender of their preferences on all points of difference between the two churches, except on those points which pertain to the subject of foreordination, and its cognate doctrines; concerning which, as will be seen from the papers herewith submitted, your Committee demanded only that the teachings of the Cumberland Presbyterian Confession of Faith should be accepted; or, as a substitute for this proposition, that the doctrinal symbols of the Presbyterian Confession of Faith would be accepted, if so modified as to exclude all phraseology and modes of expression which may be plausibly construed to favor the doctrine of necessity or fatality. * * * The failure to consummate the union your Committee fully believe to be a matter of deep regret to many of the people of God in both churches. The correspondence, however, has not been without good results, for which both churches have abundant cause of gratitude to the Giver of all good. It has manifestly contributed already in both churches to a better understanding of their respective theological standpoints, and to a higher appreciation of each other's denominational animus, and by these means has done much to foster a spirit of mutual recognition, sympathy, and co-operation.

Respectfully submitted,

S. G. Burney,
Milton Bird,
A. J. Baird,
J. W. Poindexter,
Lee Roy Woods.

D., pp. 236-244.

(The Committee appears to have been discharged.)"

16. Attempted Union with the Presbyterian Church in the United States of America: Beginning with line 18, page 190, with the words, 'With the Assembly,' and ending with line 38, page 190, with the words, 'of America,' and reads as follows:

"WITH THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

(Under this attempt at union with the Presbyterian Church a Committee was appointed and correspondence had and the power and right to enter into such unions is recognized in this manner. The full record is not here produced because it all is not pertinent). A basis of union was submitted, which is in words and figures as follows:

1. That both Confessions of Faith shall be retained as they are and shall be regarded as of equal authority as standards of evangelical doctrine, and hereafter, in the licensure of candidates, and in the ordination of ministers or other officers of the church, or any occasion when it shall be necessary to adopt a Confession of Faith, it shall be left to the choice of the individual as to which of these he shall adopt.

2. That the Form of Government and Discipline of the Presbyterian Church shall be the form of Government and Discipline of the United Church.

3. That the United Church shall be known as the Prebyterian Church of the United States of America."

17. ATTEMPTED UNION WITH THE EVANGELICAL LUTHERAN CHURCH: Beginning with line 39, page 190, said record, with the words, 'With the,' and ending with line 21, page 191, with the words, 'discontinued. J. V. S.' and reads as follows:

"(c) WITH THE GENERAL SYNOD OF THE EVANGELICAL LUTHERAN CHURCH. * * *

The Committee on Correspondence submitted the following, which was adopted.

From the communication from the General Synod of the Evangelical Lutheran Church, directed to your body by the Rev. William Hull, who was appointed to attend the same, we learn that a Committee on Organic Union has been appointed by their Synod. We suggest that you appoint Ministers J. P. Sprowls, A. B. Miller, J. M. Gill, H. D. Onyett and W. J. Darby, a Committee to meet their committee in conference, and we most heartily pray that a union if practicable, may be consummated, also that Rev. J. P. Sprowls be appointed delegate to the Synod at its next meeting sitting and Rev. A. B. Miller his alternate (1882, p. 30).

The following report of the committee on Organic Union with the Evangelical Lutheran Church was concurred in TO THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH. Moderator and Brethren. The Committee on Organic Union, appointed at the last General Assembly, to meet a similar committee from the General Synod of the Evangelical Lutheran Church would report. * * *

4. That the correspondence be continued, and that the present General Assembly, if thought best, appoint a committee to meet a similar committee from the General Synod, and that the General Assembly suggest a meeting of these committees some time during the coming autumn or early winter (1883, pp. 30, 31).

(Note: It appears that the correspondence looking to organic union with the Evangelical Lutheran Church was discontinued J. V. S.)"

18. ATTEMPTED UNION WITH THE METHODIST PROTESTANT CHURCH. Beginning with the line 22, page 191, of said record, with the words, 'With the General,' ending with line 16, page 194, thereof, with the words, 'D. pp. 264-276,' and reading as follows:

"WITH THE GENERAL CONFERENCE OF THE METHODIST PROTESTANT CHURCH.

Your Committee on Correspondence submit the following report:

We have read with much pleasure a communication from W. H. Wills, D. D., appointed to bear to this General Assembly fraternal greetings from the General Conference of the Methodist Protestant Church, in which he speaks so kindly and brotherly of our church, and suggests that if a committee should be appointed by this body to confer with the president of that body looking to an organic union such a committee would be received with pleasure. We suggest that you appoint Rev. E. K. Squier a corresponding delegate to that body, with liberty to confer freely with the same on the subject and report the result to the next General Assembly, and that a minute of what you do in the matter be mailed by the Stated Clerk to W. H. Wills, D. D., Philadelphia, Pa., as he requests. Adopted 1883, p. 29.

In reference to the foregoing the following was adopted:

While we are not disposed to encourage the agitation of the subject of organic union with other bodies, where there is not a reasonable prospect of good resulting, yet we are free to say that if the union of our church with the Methodist Protestant Church can be effected in a way satisfactory to both parties, it is a consummation to be devoutly prayed for. And we venture to say that, so far as we understand the doctrine and polity of that church, we do not see any very formidable difficulty in the way of the accomplishment of this work. If we are in harmony in doctrine and church polity, let us combine our forces, thereby strengthening each other's hearts and hands as we go forth to labor in the vineyard of our common Lord and Master.

We submit for your adoption the following recommendation, viz., that you appoint a Committee of five to confer with the commission appointed by the Methodist Protestant Church, on the subject of organic union, and to report to the next General Assembly—1885, p. 37.

The Moderator appointed the following as a Committee on Organic Union with the Methodist Protestant Church: The Revs. S. L. Russell, A. J. McGlumphy, W. H. Black; and ruling elders John Frizzell and A. B. Martin.—1885, p. 38.

The following is the report of the joint conference:

"1. We have carefully examined the creeds of the two churches, and find no difference whatever except that which might grow out of the doctrines of the 'preservation of believers' and 'apostacy,' which we agree are not essential to the Christian system, and may with propriety be left open and unexpressed in the creed of the united Church. We have also examined the formulated expressions of the creeds of the respective churches, as stated in the Confession of Faith of the Cumberland Presbyterian Church and the Discipline of the Methodist Protestant Church; and while each sets forth the doctrines clearly, that of the Cumberland Presbyterian Church is more full and sympathetic, and we would confidently recommend it to the favorable consideration of a joint convention of the two churches, if such should be held.

"2. We have at much length discussed the polity of the respective churches, and are of the unanimous opinion that no serious impediment to an organic union exists in their government, but that a satisfactory adjustment may be accomplished." * * *

"We believe the union, if consummated, will be for the glory of God and for the advancement of His kingdom, and can see no sufficient reason why both bodies of Christians so alike in doctrine, government, and practice, should long remain as separate organizations.

"In the name of our divine Master we submit these views to the churches, and recommend that they take such further action in the matter as they may deem best.

"G. B. McElroy, Chairman,

"W. H. Black,

"S. L. Russell,

"J. W. Hering,

"J. J. Smith,

"F. H. M. Henderson,

"A. J. McGlumphy,

"Andrew B. Martin."

This report was placed in the docket.—1886, p. 16.

The report on Organic Union was taken from the docket for consideration and the following paper on the subject was adopted:

Whereas, the report of the joint convention of the Committees on Organic Union, appointed by the General Assembly of the Cumberland Presbyterian Church and by the General Convention of the Methodist Protestant Church, is before us; and

Whereas, The matters involved are of great consequence to the kingdom of God, and should not be decided without due deliberation; and Whereas, The Methodist Protestant General Conference does not meet until May, 1888, and hence there is no need of haste; therefore,

Resolved, that the said report be referred for action to the next meeting of this General Assembly, at Covington, Ohio, May, 1887.—1886, p. 33.

ORGANIC UNION.

The General Assembly went into a Committee of the whole to consider the subject of Organic Union with the Methodist Protestant Church.

The Committee of the whole presented to the General Assembly as its report the following paper, which was adopted:

The report of the Committee appointed at the meeting of the General Assembly, May, 1885, upon the subject of organic union between the Methodist Protestant and the Cumberland Presbyterian Churches and which was postponed at the last meeting of the General Assembly for action at this meeting has been duly considered, and as expressive of the views of the General Assembly upon the subject it is hereby declared:

1. We are gratified at finding in the action of the joint Committee, contained in said report so much of the spirit of Christian fellowship and liberality of sentiment. Such a disposition is to be commended, and should always characterize the intercourse of those who worship the same God, accept the same Christ, and believe in the same Bible.

2. We note with pleasure that in the opinion of the joint committee the creeds of the two churches, are so nearly alike, and that in their opinion the only differences existing are not essential to the Christian system. However, in this connection and with all deference and respect for the opinions of all concerned, we must express our unwillingness to omit from our system of faith a doctrine so precious to us as that of the "preservation of believers."

3. We rejoice to know that in the opinion of the joint committee the Confession of Faith of the Cumberland Presbyterian Church is, as to doctrines, so full and sympathetic that the committee "could confidently recommend it to the favorable consideration of a joint convention of the two churches"; and that said joint committee "are of the unanimous opinion that no serious impediment to an organic union exists" in the government of the two churches.

4. In view of the facts thus appearing, the Moderator is directed to appoint a commission of seven members, who shall be, and they are hereby authorized and empowered to confer with any commission or committee appointed by the Methodist Protestant Church upon this subject, and with them to agree, subject to the approval and ratification of the General Assembly, upon such terms of organic union as to them may seem right and proper.

COMMITTEE ON ORGANIC UNION.

In compliance with the foregoing recommendations, the Moderator appointed the following committee on Organic Union: S. L. Russell, W. H. Black, A. B. Martin, John Frizzell, A. J. McGlumphy, D. E. Bushnell, E. B. Crisman.—1887, pp. 33, 34.

(Note—This committee never made a report, for the reason that the Methodist Protestant General Conference took unfavorable action on organic union, before the next meeting of the General Assembly.—J. V. S.)—D., pp. 264-276.”

19. THE REPORT OF THE COMMITTEE ON THE CONFESSION OF FAITH OF 1883:—Beginning with line 19, page 185, of said record, with the words, ‘Report of,’ ending with line 34, page 185 thereof, with the words, ‘work and resources,’ and reading as follows:

“REPORT OF THE COMMITTEE WHICH PREPARED THE CONFESSION OF FAITH AND FORM OF GOVERNMENT OF 1883.

To the General Assembly of the Cumberland Presbyterian Church, to convene at Huntsville, Alabama, May 1882.

REVEREND AND DEAR BRETHERN. * * * Mindful of the fact that the Committees appointed, not to make a New Confession, but to revise the old one, we have studied not to transcend our authority and we have no hesitation in saying we have not changed a single doctrine fundamental to your scheme of theology, or any of its logical correlatives.—D., p. 27. * * *

FORM OF GOVERNMENT.—As to the Government of the Church, no material changes are proposed, except such as were found necessary to present more clearly the practice and usage of our church courts, and such as were deemed proper to develop more certainly our work and resources.”

20. ADOPTING CONFESSION OF 1883:—Beginning with line 35, page 185, of said record, with the words, ‘Adoption and Submission,’ ending with line 13, page 186 thereof, with the words, ‘as a whole,’ and reading as follows:

“ADOPTION AND SUBMISSION OF THE CONFESSION OF FAITH AND CONSTITUTION OF 1883.

“Having completed its work, the General Assembly transmitted the book to the Presbyteries for their approval or disapproval,” (From Preface to Confession of Faith, 1883), as is shown in the accompanying resolutions from the Minutes of that meeting (1882) page 36.

RESOLVED, That the Revised Confession of Faith and Government of the Cumberland Presbyterian Church, presented by the Committee on Revision, as amended by the Committee of the Whole, be and the same is hereby approved and transmitted to the Presbyteries for their action, in the following manner, that is to say:

1. Each Presbytery will, in one vote, express its approval or disapproval on the Introduction, the Confession of Faith, and the Catechism, taken together as a whole.

It being hereby distinctly understood and declared that those who have heretofore received and adopted the Confession of Faith approved by the General Assembly of 1829, and who prefer to

adhere to the doctrinal statements contained therein, are at liberty to do so.

2. Each Presbytery will, in one vote, express approval or disapproval of the General Regulations, the Directory for Worship and the Rules of Order, taken together as a whole.—D., p. 33."

21. BASIS OF UNION OF PRESBYTERIAN CHURCHES IN JAPAN RATIFIED:—Beginning with line 1, 195, of said record, with the words, 'From the Minutes,' ending with line 43, page 196, thereof, with the words "realized therefrom," and reading as follows:

"FROM THE MINUTES OF THE GENERAL ASSEMBLY OF 1890.

Report of the Board of Missions of the C. P. Church.

JAPAN MISSION. * * *

The elaborate annual report of our Board from the Japan Mission, and the details of the work herewith submitted in full, and since they supply a wealth of information, will be read, we believe, with deep interest: * * *

At the meeting of the Synod of the United Church of Christ in Japan, held in the City of Tokyo, in May, 1889, a committee of five, three native brethren and two foreign missionaries, were appointed to confer with the Japanese Cumberland Presbyterian Church on the subject of church union. The United Church (Nipponihi Kyokwai) is composed of the American Presbyterian Church, North, the Presbyterian Church, South, German Reformed, Dutch Reformed, and the United Presbyterian Church of Scotland. *Our Church appointed two native brethren and two missionaries as their Committee on Union, and after having voted church by church in favor of the proposed union, gave the Committee full powers to arrange for its consummation. Inasmuch as our General Assembly had already declared that the union upon such a basis would meet approbation, the native church assented all the more cordially thereto. The respective committees having met, it was arranged that the churches in the province of Kii and in Osaka should be enrolled in the Naniwa Presbytery, and the Tokyo Church in the Tokyo Second Presbytery. The churches will send their representatives to the spring meeting of their respective Presbyteries. The following is the Declaratory Act on the basis of which the Union has been effected.

Whereas, the Formula in which the Subordinate Standards of this Church are accepted requires assent to them as an exhibition of the sense in which the Scriptures are understood.

Whereas, These Standards, being of human composition, are necessarily imperfect, and the church has already allowed exception to be taken to their teaching, or supposed teaching, on one important subject; and

Whereas, There are other subjects in regard to which has been found desirable to set forth more fully and clearly the view

which the Synod takes of the teaching of the Holy Scriptures; therefore, the Synod hereby declares:

(1) That in regard to the doctrine of human redemption, taught in the Standards, and in consistency therewith the love of God to all mankind, his gift of his Son to be the propitiation of this whose world, and the free offer of salvation to man, without distinction, on the ground of Christ's perfect sacrifice are matters which have been, and continue to be regarded by this church as vital in the system of gospel truth, and to which due prominence ought ever to be given.

(2) That the doctrine of the divine decrees, including the doctrine of election unto eternal life is held in connection and harmony with the truth that God is not willing that any should perish, but that all should come to repentance; and that he has provided salvation sufficient for all, adapted to all, and offered to all in the gospel, and also with the responsibility for his dealing with the free and unrestricted offer of eternal life.

(3) That the doctrine of man's total depravity and of his loss of all ability or will to any spiritual good accompanying salvation is not held as implying such a condition of man's nature as would affect his responsibility under the law of God and the gospel of Christ; or that he does not experience the striving and restraining influence of the spirit of God; or that he cannot perform actions which do not spring from a renewed heart, are not spiritual, good and holy—such as accompany salvation.

(4) That while none are saved except through the mediation of Christ, and by the grace of his Holy Spirit, who works when and where and how it pleaseth Him; who, while the duty of sending the gospel to the heathen, who are sunk in ignorance, sin and misery, is clear and imperative and while the outward and ordinary means of salvation for those capable of being outwardly called by the Lord are the ordinances of the gospel; in accepting the Standards it is not required to be held that any die in infancy are lost, or that God may not extend his grace to any without the pale of ordinary means, as it may seem good in his sight.

(7) That in accordance with the practice hitherto observed in this church, liberty of opinion is allowed on such points in the Standards not entering into the substance of the faith, as the interpretation of the six days in the Mosaic account of the creation, the church guarding against the abuse of this liberty to the injury of the church.

These are the articles of the Declaratory Act which relate to the doctrinal liberty we have in the United Church (pp. 55, 56).

The Board of Missions in its report said:

Your Board heartily commend the zeal and enterprise of your Missionaries in Japan and recommend the indorsement of the union effected.

REPORT OF THE COMMITTEE ON MISSIONS.

The report of the Committee on Missions was amended and adopted as follows (p. 25):

* * * * *

(6) That you endorse the action of our missionaries in forming a union with the other Presbyterian bodies in that empire and humbly pray the largest results may be realized therefrom."

22. EARLE RESOLUTION:—Beginning with line 17, page 194, of said record, with the words, 'From the Minutes,' ending with line 48, page 194 thereof, with the words, 'W. D. Wear,' and reading as follows:

**"FROM THE MINUTES OF THE GENERAL ASSEMBLY
OF 1898.**

Report No. 2 of the Committee on Judiciary, Regarding Church Union.

The Committee on Judiciary submitted the following report which was adopted:

The Judiciary Committee report on the following resolution which was referred to our consideration:

Whereas, The Constitution of the Cumberland Presbyterian Church declares that the "General Assembly is the highest court of the church, and represents in one body, all the particular churches thereof, * * * and constitutes the bond of union, peace, correspondence and mutual confidence among all of its churches and courts;" and that it has power "to concert measures for promoting the prosperity and enlargement of the church; * * * to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church; to authorize synods and presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds," respectively, and

Whereas, All schemes and proposals for consolidation, or for co-operation, with other churches are of such nature that they fall within the scope of the Assembly's constitutional power; therefore,

Resolved, That no such proposals should be made to other churches by any part of this church, nor if made by other churches, or part thereof, should they be publicly considered by any part of this church until after the General Assembly shall have properly authorized such proceedings.

The Judiciary Committee unanimously recommend said resolution for adoption by the General Assembly. Hamilton Parks, F. H. Prendergast, Chas. O. Patton, J. G. Miller, J. L. Crawford, A. W. Fite, Alonzo Pearson, W. D. Wear."

23. RESOLUTION FAVORING FEDERATION AND UNION:—Minutes of the Cumberland Presbyterian General Assembly, 1903:—Beginning with line 18, page 289, of said record, with the words, 'Moderator Tinnon,' ending with line 6, page 290, thereof, with the words, 'General Assembly,' and reading as follows:

"Moderator Tinnon, having called Ruling Elder Judge W. E. Settle to the chair, read the following paper, which was unanimously referred to the Committee on Overtures:

Whereas, This General Assembly notes with pleasure a manifest tendency toward closer co-operation in Christian work among all Protestant denominations, and particularly a disposition among ecclesiastical families that are allied in doctrine or polity, to set aside their points of differences and to emphasize only things essential; and

Whereas, This tendency is in accord with the spirit of the Master, and with the spirit and traditions of the Cumberland Presbyterian Church, and must promote the advancement of the Kingdom of God, and

Whereas, There are before this body certain memorials praying the appointment of a committee to consider the advisability of a union of our church with the Presbyterian Church in the United States of America, and

Whereas, it would not be profitable to discuss in this body the question of organic union with any denomination, until more light on the subject has been obtained, yet we do most earnestly favor whatever may tend to bring the several branches of the Presbyterian family closer together, and we should rejoice if it should result, in the Providence of God, in a united and harmonious Presbyterian Church in this country; therefore

Resolved, That this General Assembly appoint a Committee on Presbyterian Comity, Federation and Union, to consist of nine persons, who shall do all in their power to promote the closer federation or organic union of all the branches of the Presbyterian family, and shall consider carefully any proposition that may come before it in this subject.

Said committee shall otherwise have authority to consider any proposition of like import from any denomination of Christians. The Committee shall report to the next General Assembly."

24. REPORT OF COMMITTEE ON OVERTURES FOR UNION, Minutes General Assembly of the Cumberland Presbyterian Church, 1903:—Beginning with line 19, page 197, of said record, with the words, 'The Minutes,' ending with line 14, page 198 thereof, with the words, 'were adopted,' and reading as follows:

"THE MINUTES OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH FOR THE YEAR 1903.

Report of the Committee on Overtures. No. 1.—Organic Union.

The Committee on Overtures submitted a report No. 1, which was adopted and is as follows: 'We, your Committee on Overtures, beg leave to report as follows: That your Committee has carefully considered all memorials and resolutions on the subject of Organic Union that have been submitted to us. We note with pleasure a manifest tendency toward closer co-operation in Christian work, among all protestant denominations, and particularly a disposition among ecclesiastical families which are allied in doctrine and polity,

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to set aside their minor points of difference and to emphasize only things essential. This tendency is in accord with the spirit of the Master and with the history and the traditions of the Cumberland Presbyterian Church, and is certainly calculated to advance the kingdom of God among men. It is a matter for devout prayer by the whole Church, that this tendency may continue in its growth toward closer affiliation and organic union among members of the Presbyterian household in the United States until there shall be such a removal of the differences in doctrine, polity and social conditions as will insure the consummation and realization of a glorious and united Presbyterianism in the United States.

We, therefore, recommend to the General Assembly the adoption of the following resolutions:

Resolved, 1. That a Committee of nine, on Presbyterian Fraternity and Union, be appointed by this Assembly to confer with such like committees as may be appointed by other Presbyterian bodies in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States, and if, in any particular case, after conference and investigation, union shall seem to be desirable and practicable, to suggest suitable measures for its accomplishment, and to report such basis of union as may be mutually agreed upon to the Next General Assembly.

Resolved, 2. That the foregoing resolution be reported immediately to the Presbyterian bodies now in session, and in due course to all other Presbyterian bodies in the United States.

(Said report was signed by the Committee, and accompanied with Report No. 2, setting forth views as to the method of appointing said Committee recommended in the report above, which said report is immaterial to this controversy, not being called in question. The above reports Nos. 1 and 2 were adopted.)"

25. APPOINTMENT OF THE COMMITTEE ON FRATERNITY AND UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1903:—Beginning with line 31, page 127, of this record, with the words, 'Appointment,' ending with line 5, page 127, with the words, 'to the Committee,' and reading as follows:

"APPOINTMENT OF COMMITTEE ON FRATERNITY
AND UNION (Page 4).

Minutes C. P. Gen. Assembly, 1903, (page 75).

"Reports were made as to the election of members to constitute the Assembly's Committee on Presbyterian Fraternity and Union, as follows:

Chosen by the Commissioners from the Synods of Alabama, Mississippi and Tennessee; the Rev. Ira Landrith, of Nashville, Tennessee, and Elder E. E. Beard, of Lebanon, Tennessee.

Chosen by the Commissioners from Texas and Indianola Synods; the Rev. S. M. Templeton, Clarksville, Texas, and Elder M. B. Templeton, of Waxahatchie, Texas.

Chosen by the Commissioners from the Synods of Arkansas, Kentucky, and Missouri; the Rev. B. P. Fullerton, D. D. St. Louis, Missouri, and Judge W. E. Settle, of Frankfort, Kentucky.

Chosen by the Commissioners from the Synods of Illinois, Indiana, Iowa, Kansas, Ohio, Oregon, Pacific and Pennsylvania: the Rev. D. E. Bushnell, D. D. Alton, Illinois, and Pres. A. E. Turner, of Waynesburg, Pennsylvania.

It was determined that there should be an enlargement of said Committee, and, on motion, Rev. W. J. Darby, D. D. and B. G. Mitchell, D. D. were added to the Committee."

26. SPECIAL REPORT ON UNION, BY W. H. BLACK, CHAIRMAN, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, pp. 25 to 30:—Beginning with line 27, page 291 of this record with the words 'By common consent,' ending with line 7, page 297, thereof, with the words, 'W. H. Black, Chairman,' and reading as follows:

"By common consent, the Standing Rule was suspended and the Committee on Fraternity and Union submitted its report (see 55); also the following supplemental report:

In support of our recommendation, we beg leave to submit the following grounds of our action for your candid consideration:

1. THINGS WHICH PRESUMPTIVELY FAVOR UNION.

1. The History of the Movement. It was spontaneous in both Churches, there being no previous arrangement or agreements, but individuals, Presbyteries and Synods acted independently, in both Churches, in favor of the movement, after the publication of the action of the General Assembly of the Presbyterian Church in the United States of America of its acts of revision, the Declaratory Statement and the Brief Statement.

2. The historic origin and spirit of the Cumberland Presbyterian Church. Our fathers did not want independence, but liberty, such liberty as is now secured by the Declaratory Statement and specifically emphasized in Concurrent Declaration No. 1 (p. 63 a).

The fact that this liberty was what the fathers sought, is evident from the action of Cumberland Presbytery, in the first year of its history. Note the following quotations:

1810: "We have in view as Presbytery to make another proposition to the Synod of Kentucky or some other Synod for a reunion." Circular letter, Digest p. 235.

1811: "This Presbytery agree to meet a like committee of West Tennessee Presbytery or Muhlenburg Presbytery in order to confer on the subject of reunion." Minutes. Digest p. 236.

1812: "This Presbytery have always been and expect always to be, ready and willing for union with the general Presbyterian Church on gospel principles." Minutes. Digest p. 236.

1813: "Cumberland Presbytery has made every reasonable effort to be reunited to the General Presbyterian Church." Minutes. Digest p. 236.

1860: "We cherish the fond hope that the day is not far distant when the entire family shall be represented in one General Assembly." Minutes. Digest p. 232.

Since then, various efforts have been made at Organic Union with the Southern Presbyterian Church and the Presbyterian Church in the United States of America.

1867: A committee representing our General Assembly, composed of Drs. Burney, Burrow, Baird, Bird, Woods and Poindexter, agreed on the following:

"The doctrinal symbols of the Presbyterian Confession of Faith would be accepted, if so modified as to exclude all phraseology and modes of expression which may plausibly be construed to favor the doctrine of necessity or Fatality."

(Dr. W. B. McDonnold was in conference with this committee when the above was adopted.) (Digest p. 243).

1873: In conference on the subject of Organic Union with the Presbyterian Church in the United States of America, Drs. Beard, Baird, Mitchell and Miller adopted the following:

"As God in His Spirit and providence clearly calls us to a serious consideration of the question of the union of these two branches of His church, it should be gravely considered whether the Great Head of the Church has not also made an occasion for such slight changes in the language of these time honored standards as will fully adapt them to the faith of both churches." Digest p. 262.

In addition to the above our General Assembly has taken action on the subject of Presbyterian union among missions on the foreign fields as follows:

1885. With reference to the United Church of Christ in Japan: "We believe union on the foreign mission field is desirable and will cheerfully enter into whatever measures may seem best looking to that end." Digest p. 507.

1888: "If Cumberland Presbyterians in Japan are satisfied to become a part of said United Church, upon the basis of the exceptions to the Westminster Confession of Faith, that are set forth in the Declaratory Act of the United Presbyterian Church of Scotland, such a step will meet with the approbation of the General Assembly." Digest p. 508.

These quotations show very plainly the fathers' attitude on the subject of Organic Union with the Presbyterian Church, and the history and actions of the Assembly have been consistent, from the beginning on this subject. The instruction given our missions in Japan is explicit to the effect that union was desirable on the basis of the Declaratory Act of the Church of Scotland, which Act does not allow any more liberty of belief, nor modify in a more emphatic manner the objectionable features of the Westminster Confession of Faith, than does the Declaratory Statement of the Presbyterian Church in the United States of America.

3. The character and aims of the Presbyterian Church in the United States of America: This church, which is the greatest Presbyterian Church in the world, heartily desires a truly national field

for its work and workers. It wishes its aggressive evangelizing operations carried on in the south as well as in the north, and seriously objects to being called the "Northern Presbyterian Church." This being the ideal of the Presbyterians, naturally they would hail the union with our church as a providential means to its realization.

In 1874, when negotiations were under way between them and our Church, looking to organic union, it was we who broke off the negotiations, and not they.

4. Revision has revised. Attention will be called to this matter further on, but it is mentioned here in order to emphasize the presumption in favor of union.

5. The unanimity of the Committee on Union: So far as the representatives of the two Churches were present, there was not a single note of discord concerning the report as finally adopted, and when we remember the prayerfulness of the committees during the negotiations, the painstaking with which they reached their conclusions after twelve days of conference, and the representative character of the men who composed the committees, the unanimity is all the more remarkable and raises the presumption in favor of the adoption of the report.

6. The environing conditions: It is a characteristic of our civilization at the beginning of the Twentieth Century that there are great combinations in trade, manufacture, commerce and labor. Men are sinking their individual interests and things which represent smaller groups in society, for the sake of the greater economy, efficiency and resources of larger organizations. It is also one of the phenomena in religious and reform work. The American Bible Society, the American Sunday School Union, the International Sunday School Lesson System, Young Men's Christian Association, The Young People's Society of Christian Endeavor, the Women's Christian Temperance Union, Women's Clubs, and similar organizations, have taken a large part of the religious work out of the hands of the churches, as individual denominations, and are reforming it in a much more effective way than can be done through single denominations, working separately.

The age is practical, not philosophical. Men are not asking for psychological distinctions, but for results, and for the things which bring about results. It is the day when individualism is ceasing to press its claims, and our thought and activities are tending in the direction of solidarity.

7. Presbyterianism is on trial before the world. The very fact that steps have been taken looking to organic union, has raised a presumption in its favor in the public mind. Wide publication through the Associated Press, in the metropolitan journals, as well as in the religious papers of every denomination, has been given to our joint report on union. It has been widely discussed. An expectation in the public mind has been awakened in its favor. The presumption is that this expectation will not be disappointed.

The world is to be saved, and it is the mission of Presbyterianism to present its message for the conversion of men. It is one of the great purposes of every church to so reinforce its message with a state of things in its own communion, as to compel approval and bring approval and bring about conviction. The world will be impressed mightily in favor of the message as it comes from Presbyterianism, if it can be seen to be more concerned about the power of its message than about minor points of difference as between Presbyterians. "The glory which thou hast given me, I have given unto them, that they may be one in us; that the world may believe that thou didst send me."

8. Protestantism is on trial. The Roman Catholic Church has always charged against Protestantism that it is divided into sects, and their arguments based on that charge have been difficult to answer. A union of two Protestant sects will be a step in the direction of strengthening the historic claims of Protestantism in favor of the authority and the Doctrine of Justification by Faith.

II. The Doctrinal Status.

1. The revision has revised. The phrase "as revised in 1903," is one of the characteristic marks of the report.

1. The revision has modified the definition of the generic principle of the Confession, viz: Divine Sovereignty. It was that definition which led our fathers to make the charge of "fatality" against the Confession. There were three elements involved in that charge, unconditional election, limited atonement and irresistible grace. The revision has revised with reference to these three points.

(1) "Unconditional election" has been revised, as witness the following quotations from the Declaratory Statement: "His readiness to bestow His saving grace on all who seek it," wherein the divine readiness is conditioned upon human seeking. "No man is condemned except on the ground of his own sin." Where divine condemnation is conditioned upon the ground of sin. See also Sections I and II of Chapter XXXV on "The Love of God and Missions."

(2) "Limited atonement" has been revised as witness the following quotations from the Declaratory Statement: "His love to all mankind, His gift of His Son to be the propitiation for the sins of the whole world." "God desires not the death of the sinner, but has provided in Christ a salvation sufficient for all, adapted to all and freely offered in the Gospel to all." Wherein the terms of "General atonement" are emphatic. "All dying in infancy are included in the election of grace," which is emphatically general on a long controverted point. In connection with the above, read Secs. I, I, and III of Chapter XXXV on "The Love of God and Missions."

(3) "Irresistible Grace" has been revised as witness the Declaratory Statement, in the following language: "His decree hinders no man from accepting that offer." Note the following also from Chapter XXXIV, Section II: "He prepares the way for it."

accompanies it with His persuasive power, and urges its message upon the reason and conscience of men, so that they who reject its merciful offer are not only without excuse, but are also guilty of resisting the Holy Spirit." That which can be resisted is not irresistible. Note also Section III of Chapter XXXV.

The generic principle of divine sovereignty is defined in the revision material in such terms as to exclude necessarianism and fatality, and to recognize universal divine love, and human freedom and responsibility. The old view is not specifically set aside, but the new, as we think, the better, is set alongside "so as more clearly to express the mind of the church" as declared by the General Assembly of that church in its instructions to its Committee on Revision in 1901. In this connection note the phraseology of Concurrent Declaration No. 1: This liberty is specifically secured, as to Chapter I and Chapter X, Section 3."

2. The revision has revised the Ordo Salutis. Note, the Ordo Salutis as presented in the Confession Chapters, in Chapters XXXIV Section III, of the revision material, and in the Brief Statement:

- (1) The Confession Chapters: Effectual Calling or regeneration,
Justification,
Adoption,
Sanctification,
Faith,
Repentance,
Good Works,
Perseverance.
- (2) Chapter XXXIV, Sect. III., Conviction,
Repentance,
Regeneration,
Faith,
Adoption,
Sanctification,
- (3) Brief Statement: Free Grace,
Faith and Repentance,
(Justification),
New Birth and New Life.

"The System of Doctrine" is not the Ordo Salutis, or then there are several systems in the Presbyterian Church. What, then, is the system? This is one of the unanswered questions. A few years ago the Presbyterian Alliance undertook to state what is the consensus of the Reformed Confessions, but, after struggling with it for four years, abandoned the attempt. At a somewhat more distant date, the Cumberland Presbyterian Church attempted to define Sanctification, but never got beyond the brilliant avowal that "It is a doctrine of the Holy Scripture." There are some things which were better left undefined.

II. The Brief Statement. Concerning this Brief Statement while it is clearly understood that it is not in the Constitution of the Presbyterian Church, nevertheless it has been adopted unanimously by the General Assembly of the Presbyterian Church, has therefore more authority than could be given to it by any individual writer, no difference how great his name, and is intended "To instruct the people and to give a better understanding of our doctrinal beliefs." "Better" than what? Than the Confession? Than the Catechism? Than the revision? It has been ordered published in the Church Hymnal and is intended for general circulation among the people. Therefore it is a competent witness as to the general belief of the Presbyterian Church on the doctrines which it defines and expounds. Tried by the threefold "fatality" test, and by the *Ordo Salutis*, it agrees with Cumberland Presbyterian teaching.

III. Then, IS UNION A DUTY?

That is a question which is now before your reverend body. In the opinion of your committee the presumption is decidedly in favor of it being the duty of the church to enter into this union. Further, it is the opinion of your committee that the doctrinal status as between the two Confessions of Faith favors it. There never can be a unanimity that is absolute, where many finite intelligences are concerned. We see things from different points of view, with different degrees of emphasis, out of differing personalities and impelled by disparate motives; therefore it is to be expected that anyone who so desires can find objections in the statements of another; but brethren dwell together in unity, not by identity of beliefs, not by the acceptance of absolutely unobjectionable doctrinal symbols, but by mutual tolerance, forbearance and love. If this union is consummated, the real tie will not be the confessional symbol of the United Church, but the Spirit of Christ in the hearts of the brethren.

Respectfully and fraternally. For the Committee.

Wm. H. Black, Chairman."

27. REPORT OF COMMITTEE ON UNION. Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904; beginning with line 24, page 198 of said record, with the words, 'this report,' ending with line 4, page 199 thereof, with the words, 'thou lovest me,' and reading as follows:

"(This report so far as it is the separate report of the committee of the Cumberland Presbyterian Committee merely sets forth the history and minutes of its proceedings as a Committee, concerning which processes no complaint is lodged, and is not set forth herein because not deemed material. The JOINT REPORT ON UNION therein set forth, being the Joint Report of the Committees representing the two churches, is fully set forth in plaintiffs' evidence and is found below in this record at page 67. Only the following part of said report of the Cumberland Committee is set out):

"We bore in mind constantly the fact that there were two churches to be considered and that any plan we adopted would be subject to the criticism of both denominations. We have done the best we could. As time passes we grow more and more contented with the results of our labors. We sincerely and heartily believe that what we have done is for the honor and future welfare of the Presbyterian Church and worthy of all her traditions; that it is for the honor and future welfare of the Presbyterian Church in the U. S. A. and worthy of all her noblest traditions; and that in the crystallization of providential tendencies which are imperative in their demands upon the churches and which will certainly ultimate in the spread of the gospel and consummate in the glory of our heavenly Father. The glory of the church is its unity. "The glory which thou has given me I have given unto them; that they may be one, even as we are one; I in them, and thou in me, that they may be perfected into one; that the world may know that thou didst send me, and lovedst them, even as thou lovedst me."

28. JOINT REPORT ON REUNION AND UNION. Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, pp. 62a to 65a—beginning with line 16, page 128 of this record, with the words, 'The Committee,' ending with line 45, page 128 thereof, with the words, 'James M. Hubbert, Sec.,' and reading as follows:

"The Committee on Church Co-operation and Union of the Presbyterian Church in the United States of America, and the Committee on Fraternity and Union of the Cumberland Presbyterian Church, after a free and full interchange of views, with continued supplication for divine guidance, unanimously recommended to their respective General Assemblies for their consideration, and if they deem proper, for their adoption, the accompanying papers, viz:

I. Plan of Reunion and Union of the two Churches.

II. Concurrent Declarations to be adopted by the respective General Assemblies meeting in 1904.

III. Recommendations.

I. Plan of Reunion and Union of the Two Churches:

We believe that the union of Christian Churches of substantially similar faith and polity would be to the glory of God, the good of mankind, and the strengthening of Christian testimony at home and abroad.

We believe that the manifest providential developments and leadings in the two churches since their separation, together with present conditions of agreement and fellowship, have been and are such as to justify their reunion.

Therefore, we cordially recommend to your respective General Assemblies, that the reunion of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church be accomplished as soon as the necessary steps can be taken, upon the basis hereinafter set forth.

1. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church, Los Angeles, Cal., May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Presbyterian Church, Nashville, Tenn., May 21st, 1903, shall be united as one church, under the name and style of The Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate Churches now possess.

2. The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

3. Each of the Assemblies shall submit the foregoing Basis of Union to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church in the United States on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice."

Each Presbytery shall, before the tenth day of May, 1905, forward to the Stated Clerk of the Assembly with which it is connected, a statement of its vote on the said Basis of Union.

4. The report of the vote of the Presbyteries shall be submitted by the respective Stated Clerks to the General Assemblies meeting in 1905, and if the General Assemblies shall then find and declare that the foregoing Basis of Union has been approved by the constitutional majority of the Presbyteries connected with each branch of the Church, then the same shall be of binding force, and both Assemblies shall take action accordingly.

II. CONCURRENT DECLARATIONS.

As there are matters pertaining to the interests of the Church, which will manifestly require adjustment when the reunion shall have been accomplished, and concerning which it is highly desirable that there shall be a previous good understanding, the two Assemblies agree to adopt the following concurrent declarations, as in their judgment proper and equitable arrangements and agreements:

1. In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such agreement now exists between the system of doctrine contained in the Confessions

of Faith of the two Churches as to warrant this union—a union honoring alike to both. Mutual acknowledgement also is made of the teaching and defense of essential evangelical doctrine held in common by these Churches, and of the divine favor and blessing that have made this common faith and service effectual.

It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement, which is part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that 'the ordination vow of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures.' This liberty is specifically secured by the Declaratory Statement, as to Chapter III, and Chapter X, Section 3, of the Confession of Faith. It is recognized also that the doctrinal deliverance contained in the Brief Statement of the Reformed Faith, adopted in 1902, by the General Assembly of the Presbyterian Church in the United States of America, for a better understanding of our doctrinal beliefs' reveals a doctrinal agreement favorable to reunion.

2. All the ministers and churches included in the two Denominations shall be admitted to the same standing in the United Church which they may have held in their respective connections up to the consummation of the reunion.

3. The boundaries of the several Presbyteries and Synods shall be adjusted by the General Assembly of the United Church.

4. The official records of the two churches during the period of separation shall be preserved and held as making up the history of the one church.

5. As soon as practicable after the union shall have been effected the General Assembly shall reconstruct and consolidate the several permanent committees and boards, which now belong to the two Assemblies, so as to represent, with impartiality, the views and wishes of the two bodies constituting the reunited Church.

6. The institutions of learning, together with the endowment and other property, real and personal, owned by them, which are now under the control of the Cumberland Presbyterian Church, shall remain in charge of and be controlled by the Boards of Trustees, or other managers respectively, now in charge of such institutions, endowment and property, or by their successors similarly appointed or elected; and no greater control of such institutions, their property or affairs, shall be exercised by the General Assembly, or other ecclesiastical court or body, of the reunited church, than is now exercised by the General Assembly, or other ecclesiastical court or body, of the Cumberland Presbyterian Church. Provided, that the governing Board of any of said institutions of learning shall be at liberty to enter into such special arrangement or agreement with the ecclesiastical body controlling it, as may enable said institution to preserve its integrity and maintain its present policy. And also provided, that nothing in this declaration shall affect the

relationship or control of any of the institutions of learning now connected with the General Assembly, or other ecclesiastical court or body of the Presbyterian Church in the United States.

7. The corporate rights now held by the two General Assemblies and by their boards and committees, shall be consolidated and applied for their several objects as defined and permitted by law.

8. It shall be regarded as the duty of all our judicatories, ministers and people, to study the things which make for peace, to guard against all needless and offensive references to the causes which have divided us, and to avoid the revival of past issues.

III. RECOMMENDATIONS.

1. It is recommended that such a change be made in the Form of Government of the Presbyterian Church in the United States of America, as will allow additional or separate Presbyteries and Synods to be organized in exceptional cases, within the territorial bounds of existing Presbyteries or Synods respectively, for a particular race or nationality, if desired by such race or nationality.

2. The foregoing Basis of Union and eight Concurrent Declarations shall be submitted to the respective General Assemblies of 1904, and the above Recommendation, Number 1, shall be submitted to the General Assembly of the Presbyterian Church in the United States of America, meeting in 1904, and this entire plan of union shall be operative when said Basis of Union, Concurrent Declarations, and Recommendation Number 1, shall have been adopted in their entirety, and where necessary by presbyterial action.

3. That the blessing of the Great Head of the Church may rest upon the results of our efforts for reunion and union, it is earnestly recommended to the congregations throughout both branches of the Church, that they observe Sabbath, September 18th, 1904, as a day of fervent and united prayer to Almighty God, that He would grant unto us all "the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord," and in the new relation now contemplated, enable us to keep "the unity of the spirit in the bond of peace."

W. H. Black,
R. M. Tinnon,
Ira Landrith,
E. E. Beard,
S. M. Templeton,
M. B. Templeton,
B. P. Fullerton,

W. E. Settle,
D. E. Bushnell,
A. E. Turner,
W. J. Darby,
B. G. Mitchell,
W. H. Roberts,
Chas. A. Dickey,

Robert F. Coyle,
Reuben H. Hartley,
Douglass G. Putnam,
Reuben Tyler,
E. S. Wells,
Wm. N. Page,
Wilton M. Smith.

In conclusion, we unite heartily and prayerfully in the recommendation that the 'Joint Report on Union' be adopted and its provisions carried out with an eye single to the glory of God.

Fraternally and obediently submitted,

Wm. H. Black, Ch'm.,
James M. Hubbert, Sec."

29. **TEMPLETON RESOLUTION**, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, page 30: Beginning with line 3, page 132 of this record, with the words, 'After the reading,' ending with line 21, page 132, with the word, 'America,' and reading as follows:

"After the reading of the foregoing report, Dr. S. M. Templeton moved the adoption of the following paper, and the motion was duly seconded, whereupon it was unanimously agreed that the discussion of this paper be made the special order for next Tuesday morning at 10 o'clock.

Resolved, 1. That the foregoing Report and Supplemental Report of the Committee on Presbyterian Fraternity and Union, appointed by the General Assembly in 1903, be received and spread upon the minutes of this General Assembly, and that the included Joint Report on Union be adopted; and that the Basis of Union be and is Recommended to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

Resolved, 2. That the Moderator and the Stated Clerk be instructed to submit the Basis of Union, contained in said Report to the Presbyteries of the Cumberland Presbyterian Church, in the usual constitutional manner, upon receiving official notification of the adoption of the said Joint Report on Union by the General Assembly of the Presbyterian Church in the United States of America."

30. **ROLL CALL AND VOTE ON ORGANIC UNION**, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, page 48: Beginning with line 24, page 132, of this record, with the words, 'On the calling,' ending with line 33, page 132 thereof, with the words, 'by the Constitution,' and reading as follows:

"On the calling of the roll, the yeas and nays have been called for, the vote on Dr. Templeton's paper offered on last Friday forenoon (see page 30) the vote was as follows. * * *

On the proposition to submit and recommend the Plan of Union and Reunion to the Presbyteries, 236 votes were cast, of which two-thirds, or 158 votes, were necessary to carry the measure. As will be seen from the foregoing, the total affirmative vote was 162, and the total negative vote was 74, therefore the Moderator announced that the measure had been carried by four more votes than was required by the Constitution. * * *"

31. **TELEGRAM ANNOUNCING THE VOTE ON ORGANIC UNION**, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, page 50: Beginning with line 31, page 297 of this record, with the words, 'The Stated Clerk,' ending with line 40, page 297 thereof, with the words, 'Stated Clerk,' and reading as follows:

"The Stated Clerk reported that the following telegram had been sent last night:

'Dallas, Texas, May 25, 1904.

To the General Assembly of the Presbyterian Church in the U. S. A., Buffalo, N. Y.

The General Assembly of the Cumberland Presbyterian Church to-night adopted Plan of Reunion and Union by constitutional majority of two-thirds.

Warren E. Steele, Moderator,
J. M. Humphrey, Stated Clerk.' "

32. MESSAGE FROM THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, RECEIVED AFTER ADJOURNMENT; Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, page 71: Beginning with line 3, page 298 of this record with the words, 'To the foregoing,' ending with line 11, page 298 thereof, with the words, 'Stated Clerk,' and reading as follows:

"To the foregoing message there was afterwards received the following response:

'Buffalo, N. Y., May 26, 1904.

To the General Assembly of the Cumberland Presbyterian Church, Dallas, Texas:

The General Assembly at Buffalo acknowledges your telegram as to the adoption by you of the Plan of union, and announces that it is engaged in the consideration of said plan.

Wm. H. Roberts, Stated Clerk.' "

33. SPECIAL COMMITTEE ON ORGANIC UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, page 24: Beginning with line 11, page 301 of this record, with the words, 'Elder T. H. Perrin,' ending with line 30, page 301 thereof, with the words, 'unanimously adopted,' and reading as follows:

"Elder T. H. Perrin offered the following resolution:

RESOLVED, that item 4 of the Stated Clerk's report relating to Organic Union, be referred to a special committee of five, to consist of Rev. S. M. Templeton, D. D., of Texas; Judge E. E. Beard of Tennessee; Rev. T. A. Wigginton of Indiana; Judge W. B. Young of Tennessee, and Rev. W. M. Crawford of Alabama.

Elder F. A. Prendergast proposed the following to amend Elder Perrin's proposed motion by adding thereto as follows: The committee's report shall show the number of Presbyteries, by name, voting for Union, and the number of Presbyteries voting against Union, by name; also the votes cast for and against Union in each Presbytery, and the number and names of the Presbyteries not voting at all. Elder Perrin accepted this amendment. Elder J. B. Tally of Alabama, made a motion to add to the Committee the name of Elder J. J. McClellan of Mississippi, which motion was lost; and then Elder Tally proposed to amend the

resolution by striking out the name of Rev. W. M. Crawford and inserting the name of Elder J. J. McClellan, which amendment was accepted, and Elder Perrin's resolution with these accepted proposed amendments, was then unanimously adopted."

34. STATED CLERK'S REPORT ON ORGANIC UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, p. 23: Beginning with line 38, page 300 of said record, with the words, 'Pursuant to,' ending with line 3, page 301 thereof, with the words, 'in this matter,' and reading as follows:

"Pursuant to the Assembly's order a year ago, that the Moderator and your Stated Clerk should transmit to the Presbyteries the question of union between the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, I beg to report that said directions were followed, and I herewith present for your examination the form of submission that was sent to the Presbyteries and also the returns that have been received from Presbyteries as showing the result of their action in this matter."

35. REPORT OF SPECIAL COMMITTEE ON ORGANIC UNION AND THE ACTIONS THEREON, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, pages 41-45: Beginning with line 37, page 132 of this record, with the words, 'It was then announced,' ending with line 30, page 140 thereof, with the words, 'General Assembly,' and reading as follows:

"It was then announced that the Special Committee on Organic Union was ready to report, the Chairman, Dr. S. M. Templeton, stating that two reports would be submitted, one by the majority and the other by the minority, whereupon the Stated Clerk read the following Majority and Minority Reports of said Committee:

MAJORITY REPORT OF SPECIAL COMMITTEE ON ORGANIC UNION.

To the General Assembly:

Your special Committee appointed to canvass the vote of the Presbyteries upon the question of the approval or disapproval of the Union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, respectfully report:

There has been turned over to us statements from 113 of the 114 Presbyteries in the Church, there being no statement from the Florida Presbytery, which, we understand for lack of a quorum, had no meeting, and did not vote on the question. With the exception of the Cookeville and Ozark Presbyteries, the returns were made in the following form:

CERTIFICATE OF VOTE ON ORGANIC UNION.

I hereby certify that the Presbytery, in the Synod, of the Cumberland Presbyterian Church, in session at 190..., did in the Constitutional manner, give consideration to the proposition submitted to the Presbyteries by the General Assembly, pertaining to the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and took action thereon, and that the Presbytery, by a majority vote, expressed its* of said Basis of Union.

Signed by.....

Stated Clerk of the Presbytery.

** 190...

Upon canvassing these returns we find that sixty (60) Presbyteries voted for approval of the Reunion and Union of said two Churches, as follows:

(Here is inserted the names of the sixty Presbyteries which voted favorably to union).

We find that fifty-one (51) Presbyteries voted disapproval of the same as follows: (Here is given the names of the fifty-one Presbyteries voting against the union).

We also find two (2) Presbyteries not voting; the Florida Presbytery, not reporting, and the Ozark Presbytery reporting having voted against approval, and then reconsidered its vote on Union and laid the Union matter on the table indefinitely.

(The Committee then submits two Exhibits, one from Cookeville Presbytery, showing that it voted conditionally and a second Exhibit showing the vote of the Ministers and elders in each Presbytery).

CONCLUSION.

There being one hundred and fourteen (114) Presbyteries in the Church, we find and declare that more than a constitutional majority of the whole number of Presbyteries in the Church have voted in favor of the Reunion and Union, and we therefore recommend that you adopt the following Preamble and Resolutions:

WHEREAS, The General Assembly of the Presbyterian Church in the U. S. A., which met in 1903, and the General Assembly of the Cumberland Presbyterian Church, which convened in the same year, each appointed a Committee looking to a union of the said two churches, and,

Whereas, Said Committees, after conferring with each other, agreed upon a plan, or basis, or reunion and union of said Churches and, by a joint report, presented the same to their respective General Assemblies which convened in 1904, and recommended its adoption, and,

Whereas, The General Assembly of the Cumberland Presbyterian Church of 1904, by the Constitutional two-thirds vote, adopt-

ed said joint report, including the plan, or basis of Union to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval; and,

Whereas, Each one of the one hundred and fourteen (114) Presbyteries of the Church, except Florida, did, before the tenth day of May, 1905, forward to the Stated Clerk of this General Assembly a statement of its action on said basis of Union to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval; and,

Whereas, It appears from said statements, or reports, that sixty (60) of said Presbyteries have approved of the Reunion and Union of the Presbyterian Church in the U. S. A. and the Cumberland Presbyterian Church, upon the basis set forth in said joint report, and that fifty-one (51) Presbyteries have voted disapproval of said reunion and union, one (1) Presbytery approving conditionally, two (2) Presbyteries failing to take any final action on the question; therefore,

Be It Resolved, That this General Assembly does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Church have voted approval of the reunion and union of said churches upon the basis set forth in said joint report, and does find and declare that said reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the said basis of Union has, for the purposes of the Union, been constitutionally adopted.

Respectfully submitted,

S. M. Templeton, Chairman,

E. E. Beard,

T. A. Wiggington.

(Here follows the Exhibit "A" referred to above, wherein Cookeville Presbytery voted conditionally on the union):

EXHIBIT B. (Referred to on Page 38)

Presbyteries Favoring.

Presbytery.	Approval.		Disapproval.	
	Ministers.	Elders.	Ministers.	Elders.
Allegheny.	6	6	..	1
Amarillo.	8	5	4	8
Arkansas.	17	13	7	10
Athens.	5	6	..	..
Austin.	7	12	4	6
Bacon.	9	10	2	10
Bonham.	13	11	2	10
Brownwood.	10	8	7	8
California.	5	4	4	2
Cherokee.	4	5	2	4
Chicago.	14	7	..	..

Chillicothe	4	8	2	2
*Cookeville. . . . .	..	..	..	..
Colesburg.	4	3	..	..
Columbus.	4	2	2	2
Corsicana.	16	16	5	13
Dallas	8	17	3	2
Decatur.	11	8	3	3
Fort Scott.	6	4	..	..
Fort Smith	8	4	2	7
Fort Worth.	18	15	3	10
Foster.	11	13	3	11
Indiana.	14	13	7	10
Iowa.	3	3	4	1
Kansas City.	5	3	1	1
Kirksville.	9	8	..	1
Lebanon.	23	7	5	11
Lexington.	10	25	5	16
Lincoln.	9	6	..	..
†Little Rock.	8	..	4	..
Los Angeles.	5	5	2	..
Louisville.	3	3	1	4
Miami.	4	4	..	..
Mt. Vernon	8	14	..	2
Nebraska.	2	3	1	1
Neosho.	8	9	1	..
New Lebanon.	12	10	2	6
Oklahoma.	6	6	4	4
Oxford.	5	5	..	5
Pennsylvania	12	10	..	1
Pittsburg.	11	3	3	5
Portland.	3	2	..	..
Red River.	8	8	2	4
Rocky Mountain.	8	3	..	1
Rushville.	4	4	2	3

*Estimated joint vote of ministers and elders, 31.

†No division between ministers and elders.

Sacramento.	4	3	1	2
St. Louis.	5	5	1	5
*Salt River	11	24	..	..
San Antonio.	5	3	1	1
Snyder.	3	7	3	4
Tulare.	7	6	4	2
Union.	5	10	2	1
Vandalia.	7	7	2	1
Wabash.	5	6	1	1
Waco.	11	2	5	6
Walla Walla.	7	6	..	..
Weatherford.	5	5	2	6
West Iowa.	4	3	..	..

West Plains.	5	3	2	1
Wichita.	5	6	2	2
Willameffe.	3	4	..	..
	<hr/>	<hr/>	<hr/>	<hr/>
Total.	469	431	125	220

Presbyteries Disapproving.

Presbytery.	Approval.		Disapproval.	
	Ministers.	Elders.	Ministers.	Elders.
Abilene.	5	8	4	10
Bartholomew.	2	3	9	8
Bell.	1	3	2	7
Birmingham	8	5	3	12
Burrow.	3	5	7	9
Chattanooga	11	10	9	24
Chickasaw.	12	7	15	17
Choctaw.	4	3	12	9
Clarksville.	1	5	4	19
Columbia.	5	7	12	23
Cumberland.	2	2	4	14
Denton	8	12	7	16
East Tennessee.	5	5	8	7
Elk.	6	3	6	36
Ewing. . . . .	..	2	7	17
Greenville	5	5	5	10
Greer.	1	3	3	11
Gregory.	8	5	8	18
Hopewell	5	8	10	25
Illinois	2	1	6	10
Knoxville	5	8	7	22
Leitchfield	4	5	6	18
Logan	10	13	6	24
Louisiana	1	2	5	10
McGee	6	13	7	18
McGready	2	..	3	10
McMinnville	3	2	6	16
Madison	4	3	9	21
Marshall	4	..	5	13
Mayfield	3	2	10	24
Memphis	8	7	7	11
Mississippi	1	2	5	9
Morgan	2	2	3	6
Morrillton . . . . .	..	..	8	20
Mound Prairie	8	8	7	15
New Hope	2	3	9	21
Obion	6	..	19	40
Owensboro	3	3	5	13
Platte	8	5	6	18
Princeton . . . . .	..	2	9	27

Robert Donnell	9	6	4	29
Sangamon	7	6	12	14
San Jacinto	3	1	4	2
Springfield	12	8	6	16
Springville .....	..	..	11	18
Talladega	2	1	5	6
Texas	7	6	4	16
Washita	3	3	7	10
West Prairie	2	2	2	5
White River	2	2	5	8
Yazoo	1	1	2	5
Total	222	218	345	787

MINORITY REPORT OF SPECIAL COMMITTEE ON ORGANIC UNION.

To the General Assembly:

We, a minority of the Special Committee appointed to make a finding as to the submission of the question of union between the Cumberland Presbyterian Church and the Presbyterian Church, United States of America, and as to the action of the Presbyteries on said question, respectfully report as follows:

1. As to submission. The Moderator and the Stated Clerk of the Assembly submitted the said question to the Presbyteries in the following form: (See form and copy, Exhibit 1, page 79).

It is our opinion (1), That there is no power given the General Assembly by the Constitution of the Cumberland Presbyterian Church to negotiate, enter into, or form such union as is proposed, and was submitted by the Moderator and Clerk of our Assembly.

(2) That such action is contrary to, and in violation of, the provision and spirit of the Constitution of the Cumberland Presbyterian Church and such action is without authority and void.

2. As to the returns from Presbyteries. We have received and examined certificates from the stated clerks, from 113 of the 114 Presbyteries in the Church, there being no certificate from Florida Presbytery, which we are advised, took no action on the question. Upon canvass of the returns we find that sixty (60) Presbyteries voted for approval and fifty-one against approval.

Cookeville Presbytery passed a resolution favoring union, conditionally, but postponed final action (See resolution, Exhibit 2).

(This is given as Exhibit A in the majority Report, which see on page 39.—J. M. Hubbert, Stated Clerk.)

Ozark Presbytery voted against approval as follows; 24 against and 15 for approval, but reconsidered its action and left Presbytery without final action on the question.

Of the remaining 111 Presbyteries, we find that sixty voted for approval and fifty-one for disapproval, and refer to tabulated statements herewith submitted, showing names of each Presby-

tery. (Exhibit 3. This exhibit is the same as Exhibit B in the Majority Report.)

The summary of the vote shows that 691 ministers voted for approval, and 649 elders voted for, making total of 1,340 for approval. Also that 470 ministers and 1007 elders voted against approval, making total of 1,477 against approval.

Little Rock Presbytery reported eight for approval and four against approval, but does not give the ministerial and elder's vote, but we divided it equally, which makes the same result. This shows a majority of 137 ministers and elders of the Presbyterian vote against approval.

We dissent from (or object to) the resolution presented in the Majority Report, which says that 'reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that this basis of union has for the purposes of union been constitutionally adopted,' and insist that such action was without authority of the Constitution and that our standards have not been changed as provided by our laws. The standards provided in proposed basis of reunion and union have not been adopted as provided in the constitution of the Cumberland Presbyterian Church. Union cannot be consummated, because the amendment to the law of the Presbyterian Church, which was agreed to in the joint report should be made, allowing separate Presbyteries has not been proposed to, nor adopted by, the Presbyteries in the Presbyterian Church.

The joint report provided for an amendment allowing separate Presbyteries 'for a particular race or nationality, if desired by such race or nationality,' the amendment on this subject, proposed by the Presbyterian Church, allows separate Presbyteries 'in the interests of ministers and churches speaking other than the English language, or of those of a particular race; but in no case without their consent.' These two provisions are different and show that the Presbyterian Church has not carried out the agreement embodied in that report. The Presbyterian Assembly has not unqualifiedly agreed to the proposed union, but has reserved the right to refuse to go into the Union, and agreeing only to go in if to them the 'way be clear.'

Respectfully submitted,

J. J. McClellan,
W. B. Young.

EXHIBIT 1 to the above Report:

PRESBYTERIAL VOTE ON ORGANIC UNION.

To the Presbytery:

Dear Brethern: By referring to the Minutes of the last meeting of the General Assembly (Pages 25, 55a, 30, 55, 48), you will see that, in the constitutional manner, the Assembly has submitted to the Presbyteries a proposition pertaining to the Reunion and Union of the Presbyterian Church in the United States of America

and the Cumberland Presbyterian Church, and you are asked to give due consideration to the same and to vote thereon. This proposition is to be put before the Presbytery in the following terms:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?"

To this question the Presbytery is to give categorical answer. While the vote is taken simply upon this question, your action thereon will mean the acceptance or rejection of the entire Plan, embracing the Basis of Union, Concurrent Declarations, and recommendations, without amendment or alteration in any part (See Minutes pages 62a—65a.)

For the information of the Presbyteries, the Amendments to the Westminster Confession of Faith and the Brief Statement of the Reformed Faith have been printed in the Assembly Minutes. (See pages 72-77).

The vote of the Presbytery is to be taken on or before April 30, 1905, and the accompanying certificate of the vote is to be returned to the Assembly's stated Clerk before the tenth day of May, 1905.

W. E. Settle, Moderator,
J. M. Hubbert, Stated Clerk.

Marshall, Mo. September 6, 1904."

MOTIONS TO ADOPT FOREGOING REPORTS.

After the reading of the foregoing reports by the Stated Clerk, Dr. S. M. Templeton moved that the Majority Report be adopted, and that the resolution contained therein be made the action of this body, and the Moderator so announced the motion before the Assembly; whereupon Elder J. J. McClellan moved, as a substitute, that the Minority Report be adopted and made the action of the body, and the Moderator so stated the motion, and announced that discussion was in order.

THE VOTE ON THE MINORITY REPORT ON ORGANIC UNION.

The Moderator then proceeded to the taking of the vote on the Minority Report (See page 42) of the Special Committee on Organic Union, when the 'yea' and 'nay' vote was duly requested, and the roll was then called, by Synods, and Presbyteries, with the following result, the names of those voting 'yea' being marked with a dagger and those voting 'nay' being marked with an asterisk.

* *

Ministers voting in the affirmative	56
Ruling elders voting in the affirmative	55
Total affirmative vote	111
Ministers voting in the negative	76
Ruling elders voting in the negative	61
Total negative vote	137

The Moderator then declared that the motion to adopt the Minority Report as a substitute for the Majority Report had failed there being 111 votes in the affirmative, and 137 votes in the negative, and he proceeds to take

THE VOTE ON THE MAJORITY REPORT OF THE SPECIAL COMMITTEE ON ORGANIC UNION.

The 'yeas' and 'nays' were duly requested, and the roll was called, with the following results, the names of those voting in the affirmative being marked with an asterisk and the names of those voting in the negative being marked with a dagger: * * * The Moderator then announced and declared that the motion to adopt the Majority Report had prevailed, there being 137 votes in the affirmative, and 110 votes in the negative, and that the Resolution contained therein had constitutionally become the action of the General Assembly. (See pages 37-39).

Notice was then given by Elder J. J. McClellan that a protest would be duly filed by the minority.'

36. TELEGRAMS TO THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH FROM THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, Minutes of the General Assembly of the Cumberland Presbyterian General Assembly, 1905, pages 45 and 46:—Beginning with line 5, page 302 of this record with the words, 'Winona Lake,' ending with line 18, page 302 thereof, with the words, 'Stated Clerk,' beginning again with line 23, page 302 of this record with the words 'The following,' ending with line 34, page 302 thereof, with the words, 'Stated Clerk,' and reading as follows:

"Winona Lake, Ind., May 22, 1905.

Rev. J. M. Hubbert, Stated Clerk General Assembly Cumberland Presbyterian Church, Fresno, Cal:

Official announcement is hereby made that the Overture for Reunion and Union between our respective churches has been adopted by more than the required two-thirds vote of the Presbyteries in the affirmative; that all the conditions of the plan of Union have been complied with by this church; and that the further steps necessary to complete the Union have been referred to the Committee on Church Co-operation and Union to report to the next Assembly.

Wm. Henry Roberts,

Stated Clerk."

"The following telegram was received, and was read to the Assembly by the Stated Clerk:

'Winona Lake, Ind., May 23, 1905.

The General Assembly of the Cumberland Presbyterian Church, Fresno, Cal.:

The Assembly, in session at Winona Lake, Indiana, reciprocates heartily greetings. We have taken every step now possible toward completing Organic Union, and without a dissenting vote the voice of our church is "Come and Welcome." May you reach a like unity, is our earnest prayer.

James D. Moffat, Moderator,
Wm. Henry Roberts, Stated Clerk.' "

37. THE McCLELLAN PROTEST, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, pages 78 to 81 :—Beginning with line 20, page 143, of said record, with the words, 'Elder J. J. McClellan,' ending with line 29, page 146 thereof, with the words, 'R. W. Davis,' and reading as follows:

"Elder J. J. McClellan requested that the following Protest with signatures attached, should be spread upon the Minutes, which request was granted by the Assembly:

"To the General Assembly of the Cumberland Presbyterian Church, in session in Fresno, California, May, 1905:

We, the undersigned members of the Cumberland Presbyterian Church, and duly commissioned and enrolled members of your body, do hereby most respectfully beg to submit our emphatic protest to the majority action of your body, in reference to the proposed organic unification of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, for the following reasons, to-wit:

1. The system of doctrine taught in the confession of faith of the Cumberland Presbyterian Church, in its pure and simple statements, is in happy and harmonious response to our convictions of the doctrines of the Holy Scriptures.

2. Through nearly a century of history these doctrines have given our church a distinctive spirit of evangelization and power that easily rank it among the leading and most effective organizations for advancing and enlarging the Kingdom of Christ.

3. Our doctrine is distinctly 'via media' between the doctrines of Calvinism and Arminianism, and no character or interpretation or amount of reconstruction can bring one into harmony with the other.

4. The confession of faith of the Cumberland Presbyterian Church and the entire ninety-five years of history of the church are protestant to the doctrines explicitly expressed and taught in the Westminster confession, the confessional statements of doctrines upon which it is proposed that this union shall be effected.

5. The confessional revision of 1903 of the Presbyterian Church in the United States of America does not amend, revise,

or eliminate those doctrines to which ours has stood as an unyielding protest. Not a word or line of those objectionable chapters, sections or text has been changed, modified or eliminated.

6. The declaratory statement is not revisional in either intent or effect upon the doctrines of decrees and fatality as expressed and taught in the Westminster confession. The legal and logical effect of the declaratory statement is a reaffirmation of these doctrines.

7. The plan or basis of this union is not in its legal and logical effect a union of the two churches. Its consummation would be purely and simply the merging of the membership of our communion into the other communion and the conveyance of all our property assets into that communion. Our history, name and confessional doctrines are extinguished in the consummation of the plan.

8. The action of the Assembly at Nashville, Tennessee, May 1903, in appointing the Committee on Fraternity and Union was either without constitutional warranty or that committee has exercised prerogatives not contemplated by the Assembly as a whole.

9. The action of the General Assembly at Dallas, Texas, May 1904, in the effort to adopt and submit the joint report of the Committee on Fraternity and Union to the presbyteries for action was both irregular and without constitutional authority. The effect of the plan, or basis, of union contemplates the adoption of the confession of faith and ecclesiastical standards of the Presbyterian Church in the United States of America by our presbyteries, or church. The constitutional provision for an action of this character was not followed in the general reference.

10. A change of three votes from the negative to the affirmative side at the Dallas Assembly would have defeated the reference to the presbyteries. At least twelve members of that Assembly, whose names can be secured and given, voted for a reference, or submission, to the presbyteries under a misapprehension of their real official relation to such act or its legal import. In other words, under a full and fair understanding of their official relation to such an action, or apprehension of its real purport, at least twelve votes have been cast negatively that were cast affirmatively, defeating the union proposition.

11. There is no constitutional provision for the dissolution of our church organization or merging it into a communion having and holding different doctrines. It is only expressly provided to receive into our communion other ecclesiastical bodies whose doctrines and system of government conform to ours.

12. No action has been taken by our Assembly looking to the adoption of the form of government, rules of discipline and directory of worship of the church with which it is proposed that we unite, as provided in second paragraph of Section 60 of our Constitution.

13. The provision adopted by the Presbyterian Church in the United States of America for the organization of separate

presbyteries and synods is radically and materially different in its processes from the one proposed by the joint Committee on Fraternity and Union and incorporated in its official report. In other words, it is not the provision upon which our presbyteries have voted.

14. The past twelve months of discussion has clearly developed the fact that our church is neither ready for, nor willing to enter into, a union on the basis, or plan, proposed. The movement was confessedly premature; coercive measures can only produce confusion.

15. The official returns and past statements in the public prints show that the other church is far from being a unit in confirming the proposed organic union. This opposition is of a character and strength that demands serious consideration. The logic of its position is in many real and vital points in harmony with the opposition in our church. It arrests the attention of considerate and reflective minds. The arbitrary exercise of authority, either legally vested or assumed, in disregard of its existence and warnings, can only have disastrous results.

16. With all these facts and conditions clearly before our minds, an effective organic unification is utterly impracticable. It means disorder, chaos and confusion, instead of peace, prosperity and enlarged opportunities. It must bring the dangers of shame and reproach to the Kingdom of our Master, instead of the opportunity of strength and enlargement of His domain. And in His name, and in behalf of His Kingdom, we would submit our most emphatic protest to the majority action of this Assembly in approving the proposed plan of union.

J. J. McClellan,
W. B. Young,
R. P. Taylor,
Z. M. McGhee,
W. M. Crawford,
W. S. Bridges,
Joe H. Fussell,
S. D. Logan,
R. D. Shook,
N. D. Crawford, D. D. S.,
J. P. McDonald,
J. H. Thomas,
W. H. McLesky,
W. F. Cannon, M. D.
J. H. Zwingle,
James K. Langford,
M. L. Sloop,
J. T. Jones,
E. L. McWilliams,
H. Y. McCaleb,
Chas. L. Wade,
J. D. Gaston,

J. L. Price,
N. M. Lurton,
S. H. Braly,
Hardy Copeland,
Henry Bond,
Silas James,
C. W. Dunn,
H. A. Stevenson,
J. A. Hill,
J. P. McDaniel,
A. C. Wheeler,
B. T. Parr,
T. A. Cox,
R. E. Woods,
A. S. Barger,
E. H. Albright,
S. H. Murray,
A. J. Ferrell,
E. Robinson,
Walter Davis,
G. G. Anderson,
J. S. McNutt,

F. H. Pendergast,
F. M. Montgomery,
James Menzies,
J. H. Beanland,
P. H. Harris,
W. G. Milligan,
J. S. Lish,
G. P. Grimes,
R. G. Baxter, M. D.,
R. D. Miller,
J. D. Caldwell,
C. A. Davis,
J. A. Zinn,
J. W. Smith,
J. T. Barbee,
J. A. Whitener,
M. M. Smith,
Wm. Thos. Dale,
A. M. Buchanan,
D. T. Turner,
W. M. Robinson,
J. E. Vandiver,
R. W. Davis,"

J. N. Parker,
H. E. Wilkins, M. D.,
M. S. Randolph,
D. D. Higgason,
P. E. Carothers,
A. W. Green,
A. N. Eshman,
J. B. Hadlock,
John W. Groves,
G. W. Freeman,
J. M. Russell,
Jasper Horne,
N. R. French,
C. B. Haddon,
G. M. Smith,
H. T. Shain,
T. P. Modrell,
John B. Tally,
J. A. Keaton,
M. L. Bullard,
J. C. Tally,
T. E. H. McCroskey.

38. ANSWER TO THE McCLELLAN PROTEST, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905:—Beginning with line 36, page 205 of said record, with the words, "Answer to Protest," ending with line 24, page 217, with the words, "E. E. Baird, Committee," and reading as follows:

ANSWER TO PROTEST.

"On motion, Dr. S. M. Templeton, Dr. W. H. Black, and Elders E. E. Beard, A. R. Taylor and A. E. Turner were appointed by the Assembly a Committee to prepare an answer to the foregoing protest, and it was ordered that the answer to be prepared by this Committee shall be spread upon the Minutes, as the Assembly's answer to the protest of the Minority, and afterwards this answer was filed with the Assembly's Stated Clerk, and is as follows:

To the General Assembly:

Your committee appointed and authorized to make answer to the protest offered by certain members of your body against your action in declaring that the re-union and union of the Presbyterian Church, has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the basis of union has for the purposes of the union, been constitutionally adopted, submit the following answer to the said Protest.

This reply, in brief, from the Assembly's point of view is that the harmony of our doctrines with the Holy Scripture is not

questioned by the Assembly or the Church, in the action proposed and taken, and it is sheer error for the protestants to make such implication; that the same is true as to the spirit of evangelization; that it is preposterous to deny that churches holding doctrines in some degree variant cannot, by interpretation or reconstruction, reach common ground of agreement. That it is a violent construction of the revision of 1903 to affirm that it does not amend, revise, or eliminate any doctrine, and that not a line or word of the chapters, sections or text has been changed, modified or eliminated; that the whole official treatment of the question of union goes to show that the transaction is a *bona fide* union of the two churches and not a mere merger of one into the other, as the protestants affirm; that the constitution fully warrants the changes involved by the terms of union, while, for the power to unite, our church looks to that inherent right which lies at the foundation of all church unions, and which right and freedom to unite is voiced by the controlling legal decisions rendered in such cases; that the essential substance of the provision for separate Synods and Presbyteries for different races has been enacted by the other church, and the Assembly does not recognize the cavil raised upon the mere variance of the technical language employed; that the only known legal test of the sentiments of our church and the other church, on union, by the token that both churches have approved the terms of union in a legal and constitutional manner; that the Assembly does not enter into the dire predictions of the protestants, but looks hopefully into the future, cherishing faith in the character of our people for abiding the decisions of their church, and in the power of adhesion among us which has heretofore stood every test; and finally, that almost every count in the sixteen reasons assigned has been thrice adjudicated, having been pleaded in the Assembly at Dallas, in the general discussion attending the voting of the Presbyteries, and again in the Assembly at Fresno, and therefore all have had their day in court, and all have, in each several hearing, been overruled as to their adverse hearing on the question of this union.

DOCTRINAL AGREEMENT.

The absolute denial of the protestants that the revision has had any effect whatever on the meaning and purport of the Confession, is so radical and extreme that the protestants enjoy the distinction of being alone in such assertion. They have not the company of a single corroborating witness even of individual opinion, since the most radical opponents of both revision and union, in the other church, do not go so far in their denials.

The simple fact about the revision of 1903 is, that, being a verbal or textual revision, it is an error to test it by changes made or not made in the original text.

That revision was made, not by rewriting the original text or by striking out words and inserting others in their stead, but by authoritatively and more explicitly expressing the mind of the church at this time. The governing force of this revision is not the exact and technical meaning of the unrevised Confession but

the present beliefs of the living Church. It is unquestioned legal and moral right of the church to alter or amend its doctrinal statements, and there is no restraint upon this right by reason of its former doctrinal symbols. It is only a question of fact as to the extent of the revision. Every lawyer is familiar with the amendment of the statutes, not alone by textual revision, but also by later legislation, which always has the effect of superseding former laws wherever there is a conflict in the meaning. Every minister and Bible student must know how to interpret changes of ordinances and dispensations, not by means of a textual revision of the Old Testament laws and ceremonies, but by means of later revelations and enactment in the New Testament. The protestants have not the power to enact that nothing is revision except textual and verbal revision.

The revision is to be construed by the spirit as well as by the letter. The recognized reason leading to the revision is shown in the Presbyterian Assembly Minutes of 1901, page 105, as follows:

"These returns (of Presbyteries) indicate that it is the mind of the church that the Confession shall be interpreted throughout in harmony with the teaching of Scripture that God is not willing that anyone should perish, nor is it the decree of God, but the wickedness of their own hearts which shuts some men out from the salvation freely offered in Christ Jesus to all sinners. * * *

"That this committee be instructed to prepare amendments of Chapter III; Chapter X, Sect. 3; Chap. XVI, Section 7; Chapter XXII, Section 3; Chapter XXV, Section 6, of our Confession of Faith, either by modification of the text or by declaratory statement, but so far as possible by declaratory statement, so as more clearly to express the mind of the church, with additional statements concerning the love of God for all men, Missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrines set forth in our Confession and taught in the Holy Scriptures."

Two methods of revision were, therefore, employed in this case.

1. By Declaratory Statement, similar in effect to a declaratory statute in civil law, to make plain the meaning and intention on the law-making power. The purpose of this Declaratory Statement is further shown on its own preamble, as follows:

"Seeing that the desire has been formally expressed for a disavowal of certain inferences drawn from statements in the Confession of Faith, and also for a declaration of certain aspects of revealed truth which appear at the present time to call for more explicit statement. * * *

2. By adding the New Chapters XXXIV and XXXV, for the reason assigned in the preamble thereto.

"It is desirable to express more fully the doctrine of the church concerning the Holy Spirit, Missions, and the love of God for all men."

The Declaratory Statement and the new Chapters XXXIV and XXXV in their setting in the Revised Confession, and also the Joint Report on Union adopted in 1904, are hereby cited as official documents evidencing the now existing doctrinal agreement between the two churches.

Especially pertinent are the following extracts from the said Joint Report:

From the plan of Reunion and Union of the Churches: "We believe that the union of Christian Churches of substantially similar faith and policy would be to the glory of God, the good of mankind and the strengthening of Christian testimony at home and abroad.

"We believe that the manifest providential developments and leadings of the two churches since their separation, together with present conditions of agreement and fellowship, have been and are such as to justify this reunion."

See also Concurrent Declaration No. 1.

"In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such an agreement now exists between the systems of doctrine contained in the Confession of Faith of the two churches as to warrant this union—a union alike honoring to both. Mutual acknowledgment also is made of the teaching and defense of essential evangelical doctrine held in common by these churches, and of the Divine favor and blessing that have made this common faith and service effectual.

"It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement, which is part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that the 'ordination vow of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures.' This liberty is specifically secured by the Declaratory Statement, as to Chapter III and Chapter X, Section 3, of the Confession of Faith. It is recognized also that the doctrinal deliverance contained in the Brief Statement of the Reformed Faith adopted in 1902, by the General Assembly of the Presbyterian Church in the United States of America, 'for a better understanding of our doctrinal beliefs,' reveals a doctrinal agreement favorable to reunion."

Thus both churches officially declare the doctrinal agreement between them, the doctrinal honor with which both enter the union, and the broad liberty in doctrine, which assures us against embarrassment, humiliation, or oppression on doctrinal grounds in the union. This declaration was deliberately and authoritatively adopted by both Assemblies after being contested in both bodies by those in opposition. It has the greater authority, therefore, by its not having been adopted inadvertently or hastily. In the Buffalo Assembly a dissent came from two members of the Committee on Church Co-operation and Union, denying that such agree-

ment exists. This dissent, as well as able opinions expressed in debate to the same effect, was overruled in the Assembly by the adoption of the report, by an almost unanimous vote. There followed a protest by certain members of that Assembly, reiterating the denial of such existing doctrinal agreement. The following is quoted from the Assembly's answer to that protest:

"1. The protest is made, 'first and chiefly because the Plan of Union in its first Concurrent Declaration involved an interpretation of the doctrinal standards of the Church.' The protestants 'feel that the Constitutional right of the Assembly to make this interpretation is open to grave question.' Your Committee would answer that this protest asserts in effect that the Supreme Court of the church is not competent to interpret its doctrinal standards. This mere statement is of itself sufficient answer to the protestants. It is not only the right, but the duty of the General Assembly.

"2. The protestants assert that 'the two systems of doctrine' contained respectively in the Confession of Faith of the Cumberland Presbyterian Church and our own church 'are antagonistic to each other, especially in the instance of the doctrine of divine decrees.' This is simply a difference of opinion. The deliberations of the Assembly involved the judgment of the commissioners as to this very matter. The overwhelming vote of the Assembly in adopting the Report of the Committee indicated that the Assembly as a body does not agree with the protestants. Buffalo Minutes, 1904, page 175.

The contention against the existence of doctrinal agreement was carried before their Presbyteries, with the result that 194 Presbyteries approved the Basis of Union, while only 39 disapproved, thus again preponderantly overruling this contention in that Church, so much so that without a dissenting voice its recent Assembly announced the approval of the union.

In our own church the declaration of this doctrinal agreement was earnestly contested before the Dallas Assembly, and the Presbyteries and the objectors were overruled by that Assembly and by a constitutional majority of the Presbyteries. The same contention has again been overruled by this Assembly.

Therefore, with all due recognition of individual liberty and freedom of opinion, it is no longer an open question as to what is the official and authoritative voice of the two churches as to the sufficient doctrinal agreement to warrant this union, honoring alike to both, and upon the very terms stipulated. It should be borne in mind that individual liberty of opinion cannot set itself up to restrain the liberties of religious bodies. It should be also recognized, that when a church has declared itself, in accordance with its own laws and organism, on any question over which it has jurisdiction, there is the element of authority in its action that commands the fealty of its members and the respect of the civil authorities. It should further be recognized, that the action of a majority is the action of the body, and is as binding, in its legal effects, upon those participating in and voting against any measure as it is upon those

who vote for it. Minorities have certain rights and are entitled to certain consideration, but these rights do not involve the power to control the majority beyond the restraints imposed by the organic law of the church. The law of the church vests the weight and prestige of its authority in the majority and it does not vest any authority in the minority on any question.

FINALITY OF CONSTITUTIONAL AUTHORITY.

In their ninth assignment the protestants assert: "The effect of the plan, or basis, of union contemplates the adoption of the Confession of Faith and ecclesiastical standards of the Presbyterian Church in the United States of America, by our Presbyteries, or church." This is a valuable admission on the part of the protestants, going to corroborate the very position of this Assembly, that the adoption of the said Confession of Faith and Government of said church was intended, and was accomplished in what has been done by our church and that this was fully understood, pending action thereon. The designation of "its other doctrinal and ecclesiastical standards" in the Basis of Union, is sufficiently explicit to make it certain that the doctrinal and governmental instruments contained in the Constitution of the Presbyterian Church, in the U. S. A. were meant. The Standard Dictionary defines the word "ecclesiastical" as follows: "Of or pertaining to the church, especially considered as an organized or governing power; as, ecclesiastical architecture; ecclesiastical polity or control." The claim of the protestants that the action of the Dallas Assembly in this regard was "both irregular and without constitutional authority," and that "the constitutional provisions for an action of this character was not followed in the general reference," has all been pleaded before this Assembly, and has been overruled. The protestants have, in law, waived such irregularities, if there were any; but the Assembly denies that any such irregularity or unconstitutionality exists.

The power to determine whether the doctrine and system of government of any ecclesiastical body is sufficiently in conformity with our own to warrant an incorporation into the same organization, belongs to the courts of the church by prescribed majority action, and this power does not belong to dissenting or protesting minorities. By such majorities the courts of our church have decided that such agreement exists as to warrant this union. The Supreme Court of Pennsylvania has held that "union among churches is a perfectly legitimate part of their purpose and freedom, and mutual concession is part of the natural law of it and we cannot direct or limit it; that the right of churches to unite had been recognized in Europe and America since 1758; that of the terms of union "the Presbyteries and Synods were the constitutional judges." That the church did not forfeit the right of property by its creedal and governmental changes or change in name, and that the party recognizing the union could hold the property as against the party renouncing it. *Watson v. McGinnis*, 41 Penn., 9.

For its conclusive weight of authority, establishing the supremacy of church courts in their own jurisdiction, quotation is here made from the United States Supreme Court, in the celebrated case of *Watson v. Jones*, 13 Wallace, 769:

"Where the subject matter in dispute is strictly and purely ecclesiastical in its character, a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, and the ecclesiastical courts claim jurisdiction, the civil courts will not assume jurisdiction; they will not even inquire into the right of jurisdiction of the ecclesiastical court."

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations, to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent, and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions should appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that these decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

The court quotes with approval the following from the State Courts:

South Carolina: "It belongs not to the civil power to enter into or review the proceeding of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority." "When a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them."

Illinois: "The judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members, they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power, and cannot now invoke the supervisory power of the civil tribunals."

Missouri: "Held that whether a case was regularly or irregularly before the Assembly was a question which the Assembly had the right to determine for itself, and no civil court could reverse, modify or impair its action in a matter of merely ecclesiastical concern."

The Court adds: "But it is easy to see that if the civil courts are to inquire into all these matters the whole subject of the doctrinal theology, usages and customs, the written laws and fundamental organization of every religious denomination, may and must be examined into with minuteness and care, for they would become in almost every case the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts, where property rights were concerned, the decision of all ecclesiastical questions."

RACE PROVISION SUFFICIENT AND IN GOOD FAITH.

"In exceptional cases a Presbytery may be organized within the boundaries of existing Presbyteries, in the interests of ministers and churches speaking other than the English language, or of those of a particular race; but in no case without their consent; and the same rule shall apply to Synods."

Our Presbyteries and this General Assembly have acted on the union question with full knowledge of the foregoing race provision, and therefore, in effect have passed upon the merits of that issue. This constitutional provision for separate Presbyteries and Synods for different races is sufficient in itself, and the good faith of the other church in adopting it will be apparent to all who will read the able report on the subject adopted by the Buffalo Assembly, and who know the mind of that branch of the church on this question. A few extracts from that report will show that the South constitutes largely the "exceptional cases" and that it is seriously contemplated that separate Presbyteries and Synods will be formed in the interests of both races. Here are some extracts from that report:

"While they (the Negroes) have made commendable progress in this new condition, and have shown themselves worthy of the sympathy and respect of the white race, it cannot be denied that there is a prevailing unwillingness to accept them on equal social standing. * * *

"Prior to the war, and when in a state of slavery, they worshipped in the same churches with their masters, but since emancipation has been granted them they have formed churches of their own. There is now no such thing as mixed congregations in the South. By a process of natural selection the colored people have chosen their ecclesiastical connections among themselves." * * *

"There are no white churches in Presbyteries composed entirely of colored ministers, or where they are in the majority. From

this statement it will be seen that our work among the colored people is already substantially organized into separate churches, Presbyteries and Synods. Another very significant fact, which must not be overlooked in this connection, is, that the only advance made in our work among the colored people has been in those localities where their churches and ministers have been organized in separate Presbyteries.

"The reports which your Committee has received from the colored Presbyteries are full of encouragement and hope. On the other hand, where colored churches are associated with White Presbyteries and are in the minority, there has been little or no growth * * * In view of these obvious facts your committee is of the opinion that it would be wise to allow our colored ministers and churches to be organized into separate Presbyteries, if they should so desire. Such organization, as shown by the experience of the past, tends to deepen a sense of responsibility, stimulates activity, and helps in the development of manly independence. But this liberty of organization in special and extraordinary cases must not be limited to the colored people. Special legislation for any class or race is not considered. If a wise expediency may at times demand a separate organization for the colored people in a particular locality, so may it also for the whites. This is apparent in view of the existing condition of society, especially in the south. The Synod of Catawba covers North Carolina and Southern Virginia; the Synod of Atlantic, South Carolina and Georgia; one colored Presbytery covers Alabama, Mississippi, and part of Tennessee; another the eastern half of Arkansas. In all this vast region it is not possible to organize a white church in connection with our assembly, for the reason that such church would be under the care and control of a colored Presbytery. White Presbyterians, seeking such an organization, must ask of the Colored Presbytery permission to do so, and come under their control. Say what you please about the evils of social prejudice and racial antipathies, the fact remains that the white churches will not associate themselves with colored Presbyteries. Are we then to give over the vast region exclusively to the colored people, and leave them to determine its destiny so far as our church is concerned? Are we by our laws to draw the color line in that portion of our country, and exclude the whites from our communion? * * *

"Such an amendment, if adopted, would give equal liberty to white and colored churches, in cases in which a separate Presbyterian organization was deemed wise and necessary."

IN GENERAL.

The protestants assert that a change of three votes in the Dallas Assembly would have defeated the reference to the Presbyteries. As a matter of fact, a change of four votes would have still left a two-thirds majority for the union proposition. But the suppositional change did not take place, and the allusion by the protestants,

to the effect of such a change is as irrelevant as to say a contrary change of 74 votes would have made that Assembly unanimous for union. This Assembly has refused to go behind the vote of the Dallas Assembly, or to assume that its members were not competent to vote intelligently on the plainly printed and lengthily discussed proposition for union.

The property of the Cumberland Presbyterian Church is in no sense conveyed out of its membership into the membership of the other church as a result of this union, but our property goes along with our people into the reunited church, where the property of both churches becomes the common property of both constituencies. Only those members who may refuse to go with their church into the union will divest themselves of any property rights.

The Assembly is not a party to confessing that the union movement is premature, when there is a widespread tendency toward reunions among kindred churches in our own country, and in every Christian land, this being pre-eminently true on every foreign mission field. Nor does the Assembly admit the implication that there have been any compulsory measures employed by the church in reaching its deliberate decision to enter this honorable union. The assembly refuses to impute disloyalty to the membership, but predicates its belief in both the readiness and the willingness of the church to enter the union, on the plan proposed, upon the fact that the church itself has decided for the union, and upon the faith that our people, as a rule, will prefer to follow the authoritative and deliberate decisions of their church rather than the opinions of individuals.

It would be fatal to the practical life of the church, to await absolute unanimity in order to discharge of great duties. The official returns of the other church impress this Assembly with the gratifying heartiness with which that church approves this union. Even the harmony declared by the protestants to exist between the logic of their position and that of the opposition in the other church, is hopeful, in that those who can agree so well in separate folds, and in time of mutual antagonism, surely cannot be wholly uncongenial in the same fold, with mutual liberties recognized and provided for in terms of the union.

The Assembly must emphasize its disavowal of any arbitrary exercise of any authority vested in it, or the assumption of any authority not vested, and must remind the church that apparent implication by the protestants that the constituted authorities of our church have acted arbitrarily or with assumed powers, is not only without foundation in fact but is not in the interest of the peace, purity and unity of the church, and is, therefore, greatly to be deplored.

The Assembly does not share the fears of the protestants as to the results of organic union. The only thing that could prevent results highly beneficial to the reunited church and to the Master's kingdom, would be the refusal of our people to accept the plain and authorized decision of their church, and their putting forth ex-

traordinary efforts to thwart and defeat the peace, prosperity and enlarged opportunities of the great reunited church, and to promote the disorder, chaos, and confusion which the protestants evince that they, as well as the Assembly, would deplore.

A time like this calls for earnest reflection, and for devout inquiry after the things which make for peace. It calls for the spirit of forbearance and forgiveness among brethren which our Saviour enjoins as the only condition upon which we can expect His pardon. It calls for the exercise of the charity that suffereth long and is kind, that is not easily provoked, that taketh no account of evil, that believeth all things, hopeth all things, endureth all things and that never faileth.

Henceforth there should be no line of cleavage between brethren who have acted upon the belief that union ought to be affected, and other brethren who have acted upon the belief that it was not best. Both now accepting the voice of their church, as, to them, the voice of God on this question, and both devoting themselves to the labor of promoting the best interests of the reunited church, thereby promoting the cause of the Master in this new relation, there will be forgetfulness of present differences and great joy in the sweeter emulation and rivalry for better service.

CONCLUSION.

A careful study of the protest shows that there are really three grounds of dissent: (1) Doctrinal—they do not believe that doctrinal agreement exists. (2) Legal—They do not believe that union is constitutional. (3) Sentimental—They do not want to give up their name and book.

In answer, we declare as follows: (1) Doctrinal—Two General Assemblies and a majority of our Presbyteries believe that doctrinal agreement does exist. (2) Legal—This General Assembly, the Supreme Court of the church, has declared that every step for union has been constitutionally and legally taken. (3) Sentimental—We, also, love our name and book, but we are willing to yield both, with honor, for the sake of Him who prayed that his disciples might be one.

Let the opportunity for more deliberate reflection now be improved by our people, seeing that the excitement incident to earnest debate may now subside by reason of the fact that the decision is accomplished and final. Our people may now patiently await developments, willing for the event to prove at least some of their grave apprehensions are not to be realized. Naturally, in the heat of debate, much has been made of supposed ills that might result from the union, but it is to be presumed that those who have such fears are now as desirous as their brethren that the dreaded results may not follow.

It is hardly necessary to remind our people of the fact that there is little difference in the polity and government of the two churches, both being Presbyterian in form, and that the reunion when the organizations are fully blended, will require practically

no readjustment on the part of a very large majority of the congregations in both churches, particularly where there is but one of them in a community. Each congregation will have the same control of its affairs as now; it will continue to elect its own officers, select its own pastor, control its own property through its own trustees, admit members to its communion through its own session, bear the same relation to the Presbytery and other judicatories of the church in accordance with the Presbyterian law and forms of procedure under which we have always operated—in short the same doctrines will be preached and the same great enterprises conducted by the reunited church, though we trust with an increased efficiency which a combination of forces make possible. The terms of union guard carefully the rights of individual ministers and members of both churches, as well as of various corporations acting under the authority of the church as a whole or of any of its judicatories.

While to a large extent the changes will be locally little felt, yet, for the church at large, there will be much to gratify both constituencies to the union; the establishment of a church truly national in its occupied area, substituting concert of action instead of rivalry wherever the two branches are now in touch, and giving each a constituency where now it has none, giving the reunited church a wider influence in all public interests, and offering an immediate church home and fellowship everywhere to our people who may move from one part of the country to another.

The General Assemblies of both churches have now found and declared that the basis of union has been constitutionally adopted, and official telegrams to that effect have been exchanged between the two bodies. Only the details of blending the organizations now remain, and these have been referred to the Joint Committees on Union, to formulate and report to the Assemblies a year hence.

Therefore we have now, happily, reached a point at which all who do not resist the voice of our beloved church and who do not antagonize its interests, may confidently be expected to live faithfully up to the spirit of the eighth Concurrent Declaration adopted by the Assemblies of both branches of the Church:

"It should be regarded as the duty of all our judicatories, ministers and people, to study the things which make for peace, to guard against all needless and offensive references to the causes which have divided us, and to avoid the revival of past issues."

Under the canopy of the great High Priestly prayer of our Saviour, let us move forward with unbroken ranks:

"Neither pray I for these alone, but for them also which shall believe on me through their word; that they all may be one; as thou, Father, art in me, and I in Thee, that they also may be one in us; that the world may believe that thou hast sent me." John 17:20, 21.

Respectfully submitted,

S. M. Templeton, Chairman; Wm. H. Black, A. E. Turner, A. R. Taylor, E. E. Baird, Committee.

39. REPORT OF COMMITTEE ON FRATERNITY AND UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, pages 46a to 51a—beginning with line 6, page 304, of said record, with the words, "II. Union with," ending with line 45, page 304 thereof, with the words '(J. M. Hubbert, Sec.)' and reading as follows:

II. UNION WITH THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

As the church has been absorbed in the voting of the Presbyteries on the subject of Union with the Presbyterian Church in the United States of America, there has been no demand for a meeting of your Committee on Fraternity and Union. Such conference as has been necessary has been by correspondence, thus saving the expense of a meeting. In view of the favorable action of a majority of the Presbyteries of our Church, it is only necessary to remind the General Assembly of its duty to declare the result of the vote and to give notice to the General Assembly of the Presbyterian Church in the United States of America, now in session at Winona, Ind. See Joint Report Section 1, 4, as follows:

"The report of the vote of the Presbyteries shall be submitted by the respective stated Clerks to the General Assemblies meeting in 1905, and if the General Assemblies shall then declare that the foregoing Basis of Union has been approved by the constitutional majority of the Presbyteries connected with each branch of the Church, then the same shall be of binding force, and both Assemblies shall take action accordingly."

Also see Section III, 2, as follows:

"The foregoing Basis of Union and eight Concurrent Declarations shall be submitted to the respective General Assemblies of 1904, and the above recommendations numbered 1, shall be submitted to the General Assembly of the Presbyterian Church in the United States of America, meeting in 1904; and this entire plan of union shall be operative when said Basis of Union, Concurrent Declarations and Recommendations numbered 1, shall have been adopted in their entirety, and where necessary by Presbytery action."

Through the proper official channels you will learn of the adoption of "Recommendation, numbered 1," by the requisite constitutional vote of the Presbyteries of the Presbyterian Church in the United States of America, also of the action of their last General Assembly, and of the vote of their Presbyteries on the subject of union with our church.

Respectfully submitted,

Wm. H. Black, Chairman; R. M. Tinnon, Ira Landrith, E. E. Beard, S. M. Templeton, M. B. Templeton, B. P. Fullerton, W. E. Settle, D. E. Bushnell, A. E. Turner, W. J. Darby, B. G. Mitchell, (J. M. Hubbert, Sec.)"

40. ENLARGING COMMITTEE ON FRATERNITY AND UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1905, page 74—beginning with line 6, page 303, of said record, with the words, 'As the special order,' ending with line 26, page 303 thereof, with the words, 'J. H. Zarecor,' and reading as follows:

"As the special order, the Assembly took up the following resolutions offered by Dr. W. H. Black:

RESOLVED:

1. That the Committee on Fraternity and Union be continued and that nine new members be added thereto, making twenty-one in all, said added members to be appointed by the Moderator and his council.

2. That said Committee on Fraternity and Union be instructed to confer with the Committee on Co-operation and Union of the Presbyterian Church in the United States of America, and with the various Boards, Committees, organizations, and institutions of the Cumberland Presbyterian Church, with reference to the adjusting of the details of union with the Presbyterian Church in the United States of America.

On motion of Dr. Black, the foregoing resolutions were adopted, and the Moderator afterward announced the names of the following persons as having been chosen by the Moderator and his Council to serve as additional members of the Committee on Fraternity and Union: Revs. W. M. Crawford, S. D. Logan, R. W. Binkley, J. A. McDonald, R. L. Phelps, J. H. Miller, and Elders W. B. Young, T. W. Keller, and J. H. Zarecor."

41. MESSAGE SENT PRESBYTERIAN GENERAL ASSEMBLY; Minutes General Assembly of the Cumberland Presbyterian Church, 1905, pages 92 and 93—beginning with line 30, page 303 of this record, with the words, 'On motion,' ending with line 43, page 303 thereof, with the words, 'J. M. Hubbert, Stated Clerk,' and reading as follows:

"On motion of Dr. S. M. Templeton, it was ordered that the following message, with the signature of the Moderator and the Stated Clerk, shall be sent by wire:

'Fresno, Cal., May 24, 1905.

GENERAL ASSEMBLY PRESBYTERIAN CHURCH, U.
S. A.,
WINONA LAKE, IND.:

The Cumberland Presbyterian General Assembly, acknowledging and replying to your telegram, have to announce that we find and declare that a constitutional majority of the Presbyteries have voted approval of the basis of reunion, and union, and we pray the peace and blessings of God upon the reunion.

J. B. Hail, Moderator,
J. M. Hubbert, Stated Clerk.'"

42. TELEGRAM FROM PRESBYTERIAN ASSEMBLY RESPECTING AMENDMENTS ADOPTED PENDING THE UNION NEGOTIATIONS:—Beginning with line 17, page 305, of said record, with the words, 'The following telegram,' ending with line 35, page 305, thereof, with the words, 'W. H. Roberts, Stated Clerk,' and reading as follows:

"The following telegram was received and read, and it was ordered that it be spread upon the Minutes:

'Des Moines, Iowa, May 18, 1906.

Rev. J. M. Hubbert, D. D., Stated Clerk, General Assembly, Decatur, Ill.

The General Assembly of the Presbyterian Church in the United States of America, in session at Des Moines, Ia., May 18, 1906, has adopted a resolution adjudging and solemnly declaring that by virtue of the adoption of the basis of reunion and union, the amendments of the constitution of the Presbyterian Church, adopted in 1905, upon the consummation of union will be forthwith no longer in force nor operative in the reunited church as any part of its ecclesiastical standards, until and unless resubmitted to all the Presbyteries of the reunited church; this resolution specifically makes an exception of the amendment to Chapter 10, Section 2, Form of Government, which was a condition of the union.

Wm. H. Roberts, Stated Clerk."

43. TELEGRAM GREETING PRESBYTERIAN ASSEMBLY AND RESPONSE TO SAME; Minutes General Assembly Cumberland Presbyterian Church, 1906, page 46—beginning with line 39, page 305, of said record, with the words, 'The following telegram,' ending with line 15, page 306, with the words, 'Stated Clerk,' and reading as follows:

"The following telegram was received and read:

'Des Moines, Iowa, May 21, 1906.

To the General Assembly of the Cumberland Presbyterian Church, Decatur, Ill.:

We send you cordial greetings as brethren of one household of faith. See First Corinthians, First Chapter, seventh verse.

Hunter Corbett, Moderator,

William H. Roberts, Stated Clerk.' "

RESPONSE TO FOREGOING TELEGRAM.

It was ordered that the Moderator and the Stated Clerk should respond to the foregoing message and afterward the Stated Clerk reported that the following telegram had been sent:

'Decatur, Ill., May 22, 1906.

To Presbyterian General Assembly, U. S. A., Des Moines, Iowa.

With prayerful good will and brotherly love we acknowledge gratefully your greetings. Read Second Thessalonians, Second chapter, sixteen and seventeenth verses.

Ira Landrith, Moderator,

J. M. Hubbert, Stated Clerk.' "

44. STEELE RESOLUTIONS; Minutes General Assembly of the Cumberland Presbyterian Church, 1906—beginning with line 32, page 146, of said record, ending with line 9, page 147 thereof, with the words, 'of 57,' and reading as follows:

"The Rev. I. D. Steele offered the following paper, which was adopted:

Resolved, 1. That, in the reunion and union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, on the doctrinal basis of the Presbyterian Confession of Faith, as revised in 1903, the Cumberland Presbyterian Church does not surrender anything integral in its own system of doctrine, as set out in its own Confession of Faith, nor modify in any particular its adherence to the Word of God as the only infallible rule of faith and practice; nor has the Presbyterian Church asked or expected us to do so.

Resolved, 2. That, in uniting with the Presbyterian Church in the United States of America, the Cumberland Presbyterian Church does not alienate the property now held for particular congregations of the Cumberland Presbyterian Church; but that, in the reunited church, such property will continue to be held for the use and benefit of particular congregations in like manner as heretofore.

Resolved, 3. That, in the adjournment of its General Assembly, as a Separate Assembly, the Cumberland Presbyterian Church does not destroy or interrupt its historical continuity, but will continue its life, its history and its work in the reunited Church, under the name of the Presbyterian Church in the United States of America.

(Then follows the vote taken on the resolutions showing that the same was adopted by a vote of 162 affirmative to 105 negatives, or an affirmative majority of 57.)"

45. REPORT OF COMMITTEE ON FRATERNITY AND UNION; Minutes of the General Assembly of the Cumberland Presbyterian Church, 1906, pages 61-72—beginning with line 12, page 147, of said record, with the words, 'The General Assembly,' ending with line 42, page 149, with the words, 'is as follows,' and reading as follows:

"The General Assembly's Committee on Fraternity and Union submitted the following report, which was read in the Assembly by the Stated Clerk:

To the General Assembly of the Cumberland Presbyterian Church in session at Decatur, Ill., May 17, 1906:

Moderator and Brethren: Your committee on Fraternity and Union was continued, enlarged, and instructed by the last General Assembly, at Fresno, Cal., in the following resolution:

Resolved, 1. That the Committee on Fraternity and Union be continued, and that nine new members to be appointed by the Moderator and his council.

2. That said Committee on Fraternity and Union be instructed to confer with the Committee on Co-operation and Union of the Presbyterian Church in the United States of America, and with the various Boards, Committees, organizations, and institutions of the Cumberland Presbyterian Church, with reference to the adjusting of the details of union with the Presbyterian Church in the United States of America.

As provided in said resolution, the Committee was enlarged to twenty-one members. The following brethren were appointed to serve on said Committee, in addition to the brethren who had hitherto been members of the same: The Rev. R. W. Binkley, McMinnville, Tenn.; the Rev. W. M. Crawford, Montgomery, Alabama; the Rev. S. D. Logan, Dyersburg, Tenn.; the Rev. J. A. McDonald, Ft. Smith, Ark.; the Rev. J. H. Miller, Smock, Pa.; the Rev. R. L. Phelps, Oklahoma City, Okla.; T. W. Keller, Knoxville, Tenn.; W. B. Young, Clarksville, Tenn.; J. H. Zarecor, Nashville, Tenn.

Of these additional members the Rev. S. D. Logan and W. B. Young and J. H. Zarecor declined to serve, and according to the resolution adopted by the Assembly (Minutes 1905, 0 95, the Rev. Prof. W. P. Bone, Lebanon, Tenn., was appointed by the Committee vice the Rev. S. D. Logan, and John M. Gaut, of Nashville, Tenn., vice J. H. Zarecor, and Judge Joseph E. Jones, Dresden, Tenn., vice W. B. Young. These appointments were made first by circular letter, and then these brethren were formally elected members of the Committee at its first meeting in St. Louis. So

Resolved, 3. That, in the adjournment of its General Assembly, as a Separate Assembly, the Cumberland Presbyterian Church does not destroy or interrupt its historical, continuity, but will continue its life, its history and its work in the reunited Church, under the name of the Presbyterian Church in the United States of America.

(Then follows the vote taken on the resolutions showing that the same was adopted by a vote of 162 affirmatives to 105 negatives or an affirmative majority of 57).

Rev. Ira Landrith, L.L. D., Nashville, Tenn.; Rev. J. A. McDonald, Ft. Smith, Ark.; Rev. J. H. Miller, Smock, Pa.; Rev. B. G. Mitchell, D. D., Huntsville, Ala.; Rev. R. L. Phelps, Salisaw, Ind. Ter.; Judge W. E. Settle, Frankfort, Ken.; Rev. S. M. Templeton, Clarksville, Tex.; Judge M. B. Templeton, Waxahachie, Tex.; Rev. R. M. Tinnon, D. D., Nashville, Tenn.; President A. E. Turner, Ph. D., Waxahachie, Tex.; Rev. J. M. Hubbert, D. D., Sec. of Committee, Marshall, Mo.

On July 10, at Philadelphia, Pa., a conference was had between the Chairman of your committee and the Chairman of the Committee on Co-operation and Union of the Presbyterian Church in the U. S. A., the Rev. William H. Roberts, D. D. L.L. D.

The work before the Committee was thoroughly discussed and plans with reference to future conferences. All the members of your Committee on Fraternity and Union were promptly informed of the results of this conference.

A large correspondence was conducted, chiefly through the Rev. J. M. Hubbert, D. D., who by appointment of the General Assembly is Secretary of the Committee. A variety of valuable suggestions were obtained through brethren in various parts of the Church, and representing all classes and views of the membership of the Church.

Probably the most valuable contributions to the work of the Committee were legal opinions, on the merits of the questions involved, from distinguished lawyers in various parts of the Nation. These honorable gentlemen were of various churches, affiliations—Baptist, Methodist, Christian and Presbyterian, and some who are not affiliated with any Churches. The gratuitous services of these gentlemen were secured through the influence of various brethren, ministers and laymen, in different parts of the country. Some of these opinions were exhaustively and painstakingly written. The following may be properly named, and the gratitude of your Committee hereby expressed to them: Hon. Earl C. Bronaugh, Portland, Ore.; Judge N. W. Finley, Dallas, Tex.; Capt. Ben Eli Guthrie, Macon, Mo.; John P. Hartman, Esq., Seattle, Wash.; Judge Joseph E. Jones, Deputy Judge of the Court of Appeals of Tennessee, Dresden, Tenn.; W. S. J. McAlister, Esq., Portland, Oregon; McAnany and Alden, Attorneys at law, Kansas City, Kan.; Hon. J. W. Ray, Waynesburg, Pa.; Holt, Wheeler & Sidley, Attorneys at law, Chicago, Ill.; Hon. F. H. Schofield, Master in Chancery to the Circuit Court of the U. S. A., at Hannibal, Mo.; J. E. Miller, Esq., Lincoln, Ill.; W. C. Outten, Esq., Decatur, Ill.; Jerome Templeton, Esq., Knoxville, Tenn.; W. V. Tompkins, Esq., Prescott, Ark.; M. A. Montgomery, United States District Attorney, Oxford, Miss.; George Hubbert, Esq., Neosho, Mo.

These legal opinions were based on a statement of the case and a series of interrogatories prepared by Judge M. B. Templeton, Waxahachie, Tex. When the Committee held its meeting, at St. Louis, it was fortified with the above legal opinions, which enabled it to perform its work confidently and rapidly. Every member of the Committee was present, at the Southern Hotel, when the meeting was held, on the third day, December 29, 1905, the work of the Committee was practically done, though certain details were referred to a sub-committee, with power to complete the report and put it into final form.

Before this could be done, conferences between representatives of your Boards of Missions and Church Erection, Education Relief, Publication and Sunday School Work, with similar boards and committees of the Presbyterian Church, were necessary, and were held. The result of these conferences, which was reached by the aid of competent legal counsel, was that the consolidations of these various Boards with those of the Mother Church was entirely feasible, and the transfer of assets and trusts within the power of said Boards, under the direction of the Reunited Assembly.

At the meeting of the sub-Committees of the two Churches, in Cincinnati, Ohio, April 19, 20, 1906, the representatives of these Boards and of the Theological School at Lebanon, Tenn., were present, and sat with the Sub-Committee. There were present W. H. Black, W. M. Crawford, S. M. Templeton, John M. Gaut, W. E. Settle. And representing the Boards, B. P. Fullerton, W. J. Darby, and representing the Theological School, E. E. Beard, and the Secretary of the Committee, J. M. Hubbert.

The results of the deliberations of your Committee, in conference with the Committee on Co-operation and Union of the Presbyterian Church in the U. S. A., are found in the following joint report on Reunion and Union, which is cordially and earnestly recommended for your adoption.

The preamble and resolutions 1, 2, 3, 4, 5 and 14 were adopted at the St. Louis conference, and resolutions 6, 7, 8, 9, 10, 11, 12 and 13 were unanimously agreed upon at Cincinnati, Ohio. Said joint report on Reunion and Union is as follows:—

46. JOINT REPORT ON REUNION AND UNION;
Minutes of the General Assembly of the Cumberland Presbyterian Church, 1906—beginning with line 43, page 149, of said record, with the words, 'Joint Report,' ending with line 39, page 156 thereof, with the words, 'J. M. Hubbert, Secretary,' and reading as follows:

"JOINT REPORT ON REUNION AND UNION.

The Committee on Church Co-operation and Union of the Presbyterian Church in the U. S. A. and the Committee of Fraternity and Union of the Cumberland Presbyterian Church, earnestly recommend to their respective General Assemblies for adoption the following preamble and resolutions:

Whereas, the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church have, from time to time since their separation, made efforts looking toward the reunion of the latter with the former church; and

Whereas, The General Assembly of the Presbyterian Church in the United States of America, which met in 1903, and the General Assembly of the Cumberland Presbyterian Church, which convened in the same year, each appointed a Committee, having in view a reunion and union of the said two Churches; and,

Whereas, Said Committees, after conferring with each other, agreed upon a plan and basis of reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and, by joint report, presented the same to their respective General Assemblies which convened in 1904, and recommended its adoption; and

Whereas, The General Assembly of the Cumberland Presbyterian Church of 1904, by the constitutional two-thirds vote, adopted said report, including the plan and basis of reunion and union to the Presbyteries of the Cumberland Church for their approval

or disapproval (Minutes, pages 30, 48, and 62a) as provided in the following resolutions:

(Here follows a copy of the Templeton Resolution which is already above set out in this printed record at page 71 and for brevity reference is here made to it there.)

The Plan or Basis of Union referred to in said resolution is defined in Article I, Section 2, of the Joint Report on Reunion and Union, and was submitted to the Presbyteries of the Cumberland Presbyterian Church, as provided in Section 3, in the following words:

(Here is set out the categorical question above set out in this printed record as a part of Section 3, of the Joint Report on Reunion and Union at page 129 and also appears as a part of the minority report on the vote of Presbyteries of the Cumberland Church at Fresno, and is found in this record above at page 68) and

Whereas, Each one of the one hundred and fourteen (114) Presbyteries of the said Church, except the Presbytery of Florida did, before the 10th day of May, 1905, forward to the Stated Clerk of said General Assembly a statement of its action on said basis of reunion and union, which statements were submitted by the Stated Clerk to that Assembly; and

Whereas, Said General Assembly adopted the following resolutions:

Be It Resolved, That this General Assembly does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church have voted approval of the reunion and union of said Churches upon the basis set forth in said joint report, and does find and declare that said reunion and union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the said basis of union has for the purpose of the union, been constitutionally adopted (Minutes 1905, pages 39 and 56) and

Whereas, The General Assembly of the Presbyterian Church in the United States of America, at its session in 1904, also duly adopted said joint report, including the plan and basis of reunion and union therein contained, and did submit the basis of reunion and union to the Presbyteries of that Church for their approval or disapproval (Minutes 1904, page 130), and in the following words:

(Here is set out the categorical question just above and found in this printed record at page 68, which for brevity is not here repeated) and

Whereas, Two hundred and thirty-six of the two hundred and forty-one (241), Presbyteries of that Church did each, before the 10th day of May, 1905, forward to the Stated Clerk of that Assembly a statement of its action on said basis of reunion and union, which statements were submitted by said stated Clerk to the General Assembly of the said Presbyterian Church, which convened on the 18th day of May, 1905, and

Whereas, That Assembly did adopt the following declaration, to-wit: (Here appears a copy of the resolution passed by the General Assembly of the Presbyterian Church adopting the basis or Joint Report on Reunion and Union which appears in this record above at page, and for brevity is here not repeated).

Whereas, the Moderator of said Assembly made the following declaration, to-wit: (Here appears the declaration of the Moderator of the General Assembly of the Presbyterian Church announcing the adoption of the Plan of Union which appears below at page 130, and for brevity is here not repeated).

Whereas, official notice has been given to each Assembly of the action taken by the other Assembly, as hereinbefore recited which notice has been officially acknowledged; now, therefore, be it

Resolved, 1, That the effect of the above recited actions is:

(a) That the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards, have been adopted by the Cumberland Presbyterian Church, in accordance with its constitution and in conformity with said plan and basis of reunion and union.

(b) That said joint report, including the plan and basis of reunion and union, concurrent declarations and recommendations therein contained, have been adopted by the constituted authorities and in conformity with the organic law of said Churches.

(c) That the reunion and union provided for in said joint report and in this basis of reunion and union has been agreed to by the constituted authorities and in accordance with the organic law of both of said Churches, and is binding, and will become fully effective and operative when and as hereinafter declared.

Be It Further Resolved, 2. That immediately after the declaration hereinafter provided for shall have been made, said Confession of Faith and other doctrinal and ecclesiastical standards of the Presbyterian Church in the United States of America shall become effective and operative as to all ministers, elders, deacons, officers, particular churches, judicatories, boards, committees and all other ecclesiastical organizations, institutions and agencies of the Cumberland Presbyterian Church.

3. That after the General Assembly of the Cumberland Presbyterian Church, meeting in 1906, shall have adjourned *sine die*, as a separate Assembly, the One Hundred and Nineteenth General Assembly of the Presbyterian Church in the United States of America, which shall be composed of representatives from all the Presbyteries of the reunited church, shall upon the dissolution of the General Assembly of the Presbyterian Church of the United States of America, meeting in 1906, be required by its Moderator to meet on the Third Thursday of May, 1907, at 11 o'clock a. m. as provided for by the Form of Government of the Presbyterian Church in the United States of America. When said Assembly convenes it shall, until a new Moderator is chosen, be presided over

by the Moderator of the Assembly of 1906, of the Presbyterian Church in the United States of America; and it is recommended that the opening sermon be preached by the Moderator of the General Assembly of 1906 of the Cumberland Presbyterian Church. The Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America shall make up the roll of the General Assembly of 1906 of the Cumberland Presbyterian Church.

4. That all of the Presbyteries now constituting the Presbyteries of the two churches, as they exist at the time for electing commissioners to the General Assembly of 1907, shall elect commissioners to that Assembly on the basis of one minister and one elder for every twenty-four ministers or moiety thereof, as provided in the Form of Government of the Presbyterian Church in the United States of America.

5. That all Boards, Committees, Trustees, and other ecclesiastical agencies now required to make report to the General Assembly of the Cumberland Presbyterian Church be and they are hereby directed to report hereafter to the General Assembly of the Presbyterian Church in the United States of America.

6. Resolved, That in order to carry out the intent of Concurrent Declarations 5 and 7, to-wit:

(Here appears in said report concurrent Declarations 5 and 7, of the Joint Report on Union and Reunion, which same appears hereinabove at pages 69 and 70 hereof, and is here omitted in order to avoid repetition).

The Boards, Committees, Trustees, and other ecclesiastical or corporate agencies connected with either General Assembly, all of which have been hereinbefore directed to report hereafter to the General Assembly of the Presbyterian Church in the United States of America, or are in duty bound to report to said General Assembly, be and they are authorized and empowered of, and when so directed by the General Assembly of the Presbyterian Church in the United States of America to proceed accordingly to dissolution, in order that the funds, property and other assets by them, or any of them, now severally held be turned over to such corporate agencies, whether Boards of Committees, as may be permanently continued by the General Assembly of the Presbyterian Church in the United States of America; and such agencies, so permanently continued are intended to be substituted Trustee, to succeed to the administration of such trust funds, as well as thereafter to receive and distribute the benevolent offerings of all the churches and congregations now belonging to either church.

7. Resolved, That the benevolent and missionary Boards connected with the Presbyterian Church in the United States of America, and the Boards now connected with the General Assembly of the Cumberland Presbyterian Church after the consummation of the reunion and union, are authorized and directed to confer with each other with a view to carrying on their work in harmony with each other during the year 1906-7, full report to be made

by each of the above Boards to the General Assembly of Presbyterian Church in the United States in 1907.

8. Whereas, Upon the declaration of reunion and union of the Cumberland Presbyterian Church and the Presbyteries, Sessions, ministers and congregations, now connected with the Cumberland Presbyterian Church, will have been received into and become incorporated with the Presbyterian Church in the United States of America; Therefore

Resolved (a), That the Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, with the assistance of the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, shall be, and hereby is, authorized and directed to place the names of the Synods and Presbyteries connected with the Cumberland Presbyterian Church at the time of the completion of the reunion and union on the roll of the Synods and Presbyteries of the General Assembly of the Presbyterian Church in the United States of America of 1906, to-wit:

I. Alabama.—1. Birmingham. 2. Florida. 3. McCready. 4. Robert Donnell. 5. Springfield. 6. Tallegeda.

II. Arkansas.—1. Arkansas. 2. Bartholomew. 3. Burrow. 4. Fort Smith. 5. Little Rock. 6. Morrillton. 7. Mound Prairie. 8. White River.

III. Illinois.—1. Chicago. 2. Decatur. 3. Ewing. 4. Foster. 5. Illinois. 6. Lincoln. 7. Mt. Vernon. 8. Rushville. 9. Sangamon. 10. Vandalia.

IV. Indiana.—1. Indiana. 2. Morgan. 3. Wabash.

V. Indianola.—1. Cherokee. 2. Chickasaw. 3. Choctaw. 4. Greer. 5. Oklahoma. 6. Washita.

VI. Iowa.—1. Colesburg. 2. Iowa. 3. West Iowa.

VII. Kansas.—1. Fort Scott. 2. Kansas City. 3. Nebraska. 4. Rocky Mountain. 5. Wichita.

VIII. Kentucky.—1. Cumberland. 2. Leitchfield. 3. Logan. 4. Louisville. 5. Mayfield. 6. Owensboro. 7. Princeton.

IX. Mississippi.—1. Bell. 2. Mississippi. 3. New Hope. 4. Oxford. 5. Yazoo.

X. Missouri.—1. Chillicothe. 2. Kirksville. 3. Lexington. 4. McGee. 5. New Lebanon. 7. Ozark. 8. Platte. 9. St. Louis. 10. Salt River. 11. Springfield. 12. West Plains. 13. West Prairie.

XI. Ohio.—1. Athens. 2. Columbus. 3. Miami.

XII. Oregon.—1. Portland. 2. Walla Walla. 3. Williamette.

XIII. Pacific.—1. California. 2. Los Angeles. 3. Sacramento. 4. Tulare.

XIV. Pennsylvania.—1. Allegheny. 2. Pennsylvania. 3. Pittsburg. 4. Union.

XV. Tennessee.—1. Chattanooga. 2. Clarksville. 3. Columbia. 4. Cookeville. 5. East Tennessee. 6. Elk. 7. Knoxville. 8. Lebanon. 9. McMinnville.

XVI. Texas.—1. Abilene. 2. Amarillo. 3. Austin. 4.

Bacon. 5. Bonham. 6. Brownwood. 7. Corsicana. 8. Dallas. 9. Denton. 10. Fort Worth. 11. Greenville. 12. Gregory. 13. Louisiana. 14. Marshall. 15. Red River. 16. San Antonio. 17. San Jacinto. 18. Snyder. 19. Texas. 20. Waco. 21. Weatherford.

XVII. West Tennessee.—1. Hopewell. 2. Madison. 3. Memphis. 4. Obion.

(b) That official correspondence with said Synods and Presbyteries shall be conducted by the Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, with the assistance of the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church for 1906.

(c) That the list of churches and ministers of the Cumberland Presbyterian Church as existing at the time of the reunion and union, and certified to by the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, be printed in the United States of America, in the Minutes of the latter Church for 1906.

9. Resolved, That after the completion of the reunion and union the Board and Committees now connected with the General Assembly of the Cumberland Presbyterian Church be entered in the list of the Boards and Committees of the General Assembly of the Presbyterian Church in the United States of America, and that under their appropriate names, with their members and officers, they be published in the Minutes of the General Assembly of the Presbyterian Church in the United States of America for 1906.

10. Resolved, That the Minutes of the General Assembly of the Cumberland Presbyterian Church for 1906 be published and distributed as usual, and the Stated Clerk and Treasurer of the General Assembly of the Cumberland Presbyterian Church for 1906 be and is hereby continued in office to complete his duties, including the statement of his financial accounts final report to be made by him to the General Assembly of the Presbyterian Church in the United States of America of 1907.

11. Resolved, That the respective General Assembly hereby recommend to the One Hundred and Nineteenth General Assembly of the Presbyterian Church in the United States of America, that when steps shall be taken to adjust the boundaries of the several Presbyteries and Synods, and to define and name the same, preference shall be given, as far as possible, to the names now used in the Cumberland Presbyterian Church for its Presbyteries and Synods in the South and Southwest; that, conversely, preference be given, as far as possible, to the names now used by the Presbyterian Church in the United States of America in the North and Northwest; and that in the border territory great care be taken to preserve any names that embody associations dear to either Church.

12. Resolved, That the General Assembly of the Presbyterian Church in the United States of America shall grant to its Board of Education a measure of discretion in the application of the rules of said Board to candidates who may be recommended for

aid by Presbyteries previously in the Cumberland Church, until said Presbyteries, with their candidates, have fully adjusted themselves to the new conditions brought about by the reunion and union of the two Churches. This action shall be construed as extending to the students in the theological department of Cumberland University, according to the provisions of Concurrent Declaration No. 6.

13. Whereas, The Committee on Fraternity and Union of the Cumberland Presbyterian Church have called attention to the responsibility which its Church has felt in the matter of aiding the Cumberland Presbyterian Church, Colored—its Educational Society having been charged by its General Assembly from year to year with certain duties in relation to said Church—in order that this responsibility may be duly recognized by the reunited Church, toward that particular denomination of colored people, therefore,

Resolved, That the Board of Freedmen of the Presbyterian Church in the United States of America and the Educational Society of the Cumberland Presbyterian Church, both of which, after the completion of the reunion and union, will be agencies of the Presbyterian Church in the United States of America, are hereby authorized and directed to consider what may be done by the reunited Church for the further evangelization and education of the Colored people in the South and Southwest; report to be made to the One Hundred and Nineteenth General Assembly of the Presbyterian Church in the United States of America, meeting in 1907.

14. When this joint report, including its recitals and resolutions, shall have been adopted by the General Assembly of each of said churches, and official telegraphic notice of such adoption has been received by each Assembly from the other the Moderator of each General Assembly is empowered and directed, in behalf of his General Assembly and Church to declare and publicly announce in open session of said Assembly, and have it so recorded in its Minutes, the full consummation of the reunion and union of said churches, in the following words: 'The joint report of the two Committees on Reunion and Union and the recitals and resolutions therein contained and recommended for adoption, having been adopted by the General Assembly of the Presbyterian Church in the United States of America and the General Assembly of the Cumberland Presbyterian Church, and official notice of such adoption having been received by each of the said General Assemblies from the other; I do solemnly declare and here publicly announce that the basis of reunion and union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church in the United States of America as one Church, and that the official records of the two churches during the period of separation shall be preserved and held as making up the history of the one Church.'

In behalf of the Cumberland Presbyterian Committee,
Wm. H. Black, Chairman,

In behalf of the Presbyterian Committee,
Wm. H. Roberts, Chairman.

With reference to the foregoing joint report on reunion and union please note (1) that the report is to be considered and adopted at your convenience, and (2) that the declaration contained in Resolution 14 is to be read by your Moderator at the close of your meeting, after which no business will be in order except motion to adjourn *sine die*. Respectfully submitted, W. H. Black, Chairman. E. E. Beard, R. W. Binkley, W. P. Bone, D. E. Bushnell, W. M. Crawford, W. J. Darby, B. P. Fullerton, John M. Gaut, Joseph E. Jones, Ira Landrith, J. A. McDonald, J. H. Miller, B. G. Mitchell, R. L. Phelps, W. E. Settle, R. M. Tinnon, M. B. Templeton, S. M. Templeton, A. E. Turner, J. M. Hubbert. Secretary of Committee. (Elder T. W. Keller, a member of the Committee, declined to sign the report. J. M. Hubbert, Secretary.)"

47. TEMPLETON RESOLUTION AND VOTE ON THE SAME.—Beginning with line 40, page 156, of said record, with the words, 'After the reading,' ending with line 24, page 157 thereof, with the words, 'J. N. Trimble,' reading as follows:

"After the reading of the foregoing report, Dr. S. M. Templeton offered the following resolution, which was adopted:

Resolved, That the foregoing Report of the Committee on Fraternity and Union be accepted, and that the 'Joint Report on Reunion and Union' contained in said report be adopted.

On this resolution the yea and nay vote was called for, and was taken, with the following result: * * *

Ministers voting in the affirmative.....	85
Ruling elders voting in the affirmative.....	78
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Total affirmative vote.....	165
Ministers voting in the negative.....	50
Ruling elders voting in the negative.....	41
<hr/>	
Total negative vote.....	91
Affirmative majority	74

The Moderator then declared that the resolution offered by Dr. Templeton had been carried, and that thereby the Report of the Committee on Fraternity and Union had been accepted and that the "Joint Report on Reunion and Union," contained therein had been adopted.

MEMBERS NOT VOTING ON FOREGOING RESOLUTION.

It was agreed that record should be made of the fact that the following members, who were absent when the vote was taken on the foregoing resolution, would have voted in the negative, had they been present, viz: Revs. H. L. Bond, W. E. Dooley, W. W. Erwin, W. M. Robison; Elders John B. Cawthorn, Wm. Clarke, W. E. Dunaway, Silas James, L. A. Lawrence, R. L. Moore, W. L. Meyers, J. N. Trimble."

MODERATOR'S DECLARATION OF UNION, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1906: Beginning with line 25, page 161 of said record, with the words, 'In the terms contained,' ending with line 31, page 161, thereof, with the words, 'by reference,' and reading as follows:

"In terms contained in resolution fourteen of the Joint Report on Reunion and Union, Moderator Landrith then made the following declaration:

(The declaration being identical with the language directed to be used in Section 14 of the Report of Reunion and Union and being set forth in full in said Report hereinabove at page 109 of this record, for the sake of brevity is here inserted by reference.)"

49. FUSSELL PROTEST AND ANSWER. Minutes General Assembly Cumberland Presbyterian Church, 1906. Beginning with line 27, page 157, of said record, with the words, 'Elder Joe H. Fussell,' ending with line 49, page 159, thereof, with the words, 'W. M. Myatt,' and reading as follows:

"Elder Joe H. Fussell and others presented a protest against the assembly's action in adopting the report of the committee on Fraternity and Union; whereupon motion of Dr. S. M. Templeton, a committee of five was appointed by the Moderator and his council, to examine said protest, and report thereon; also to prepare an answer thereto, in case recommendations should be made by the committee that the protest be spread upon the Assembly's Minutes, said Committee consisting of Drs. S. M. Templeton, J. S. Grider, A. G. Berger, and Elders J. M. Gaut and Isaac H. Orr.

REPORT OF THE COMMITTEE ON FUSSELL PROTEST.

Afterward the Committee on Protest submitted the following report, which was adopted:

'Your committee, to which was referred a protest signed by Brother Joe H. Fussell and other Commissioners to this Assembly, has considered the same and respectfully submit the following:

1. The protest is couched in respectful language, and inasmuch as nothing therein contained would indicate that the signers thereof do not intend to submit to and abide by, in all respects, the actions of this Assembly, we recommend that said protest be admitted of record.

2. The brethren protest against the action of the Assembly agreeing to adjourn *sine die*. This part of the protest ignores the fact that the Joint Report does not provide for an adjournment *sine die* simply, but *sine die* as a separate Assembly. In other words, the Report contemplates that when this Assembly adjourns it will adjourn to meet as a part of the reunited Assembly of the Presbyterian Church in the United States of America.

3. The paragraphs of said protest, marked first, second, third, and fourth, deny the power of the General Assembly to declare this Assembly, as a separate organization, to be at an end; to declare that the Confession of Faith of the Presbyterian Church in the

United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards, have been adopted by the Cumberland Presbyterian Church, in accordance with its Constitution; to transfer the allegiance of the ministers, elders, deacons, and officers of particular churches, church boards and committees, to another denomination; and to direct the Presbyteries of the Cumberland Presbyterian Church to send representatives to the General Assembly of the Presbyterian Church in the United States of America.

The protest raises certain legal questions as to the authority of the General Assembly to adopt and carry into effect the resolutions contained in the report of the Committee on Fraternity and Union. These questions have been considered by the Presbyteries, and by the General Assemblies at Dallas and at Fresno, and by this Assembly, and have all been resolved against the protestants, after full, free and unlimited discussion and consideration.

Your Committee, further calls attention to the fact that all of these questions have been fully considered and passed upon by a civil court, chosen by the protestants themselves, and upon their own statement of the case, where, after elaborate arguments and full consideration, the action of the General Assembly and Presbyteries in this regard was approved and found to be in accord with the law of the Church and the civil law. The opinion of the court, delivered by Hon. W. C. Johns, has been read to this Assembly, and has already been spread upon the Minutes of this session, to which reference is hereby made. Respectfully submitted, S. M. Templeton, Chairman. J. S. Grider, A. G. Bergen, J. M. Gaut, I. H. Orr."

TEXT OF THE FUSSELL PROTEST.

The following is the text of the Fussell Protest, with its signatures which the Assembly ordered to be spread upon the Minutes:

A PROTEST.

We, the undersigned, being regularly elected Commissioners to the General Assembly of the Cumberland Presbyterian Church, which convened in the City of Decatur, State of Illinois, on the 17th day of May, A. D. 1906, now and here make this our solemn protest against the action of said Assembly in adopting the report of the Committee on Fraternity and Union, and agreeing, in said report, to adjourn, *sine die*, and in adjourning without naming a time and place to meet again.

And we assign the following reasons for our protest:

1. This Assembly is without power to declare the Cumberland Presbyterian Church, as a separate organization, at an end.
2. This Assembly has no power or right to declare that the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards have been adopted by the Cumberland Presbyterian Church, in accordance with its Constitution, and, in the opinion of these protestants, such statement is not correct.

3. Said Assembly had no power to transfer the allegiance of the ministers, elders, deacons, officers, particular churches, judicatories, boards, and committees to another denomination of Christians, and make them amenable to another church creed and constitution.

4. Said Assembly had no power to direct the Presbyteries of the Cumberland Presbyterian Church to send representatives to the General Assembly of the Presbyterian Church of America. 1. Joe H. Fussell, 2. F. A. Brown, 3. W. A. Boone, 4. N. B. Butler, 5. R. L. Happer, 6. J. W. Smith, 7. F. A. Seagle, 8. J. W. Scott, 9. J. B. Mitchell, 10. J. B. Sloan, 11. L. B. Morgan, 12. J. L. Joyner, 13. J. R. Suite, 14. J. G. Anderson, 15. T. H. Porter, 16. J. W. Lee, 17. J. M. Ashford, 18. W. J. Rogers, 19. Thos. Jarrett, 20. E. Worth, 21. F. M. McKee, 22. G. A. Campbell, 23. J. P. McDonald, 24. J. N. Bright, 25. W. A. Hartness, 26. F. W. Piper, 27. R. D. Shook, 28. J. D. Lewis, 29. Allen Foust, 30. W. H. Randle, 31. W. L. Myers, 32. I. V. Stines, 33. Wm. Clark, 34. W. A. Patterson, 35. W. S. Bridges, 36. A. A. Young, 37. A. Fulkerson, 38. T. H. Padgett, 39. J. N. Trantham, 40. Joseph Davis, 41. H. T. Kelso, 42. J. J. Magness, 43. J. E. Baggerly, 44. W. W. Selvidge, 45. J. L. Elliott, 46. N. S. Moore, 47. R. L. Mason, 48. C. M. Dysart, 49. W. E. Shaw, 50. R. L. Layman, 51. Jas. A. Marshall, 52. V. B. Costellow, 53. B. D. Porter, 54. W. C. Newberry, 55. J. A. Poteet, 56. J. D. Harned, 57. W. R. Slaughter, 58. G. W. Thompson, 59. Hillery Copeland, 60. G. B. McDonald, 61. B. T. Price, 62. Henry J. Bond, 63. W. W. Beall, 64. J. L. Hudgins, 65. D. J. Moore, 66. J. R. King, 67. B. E. Bowmer, 68. R. H. Schooler, 69. J. B. Wright, 70. T. A. Havron, 71. W. M. Robinson, 72. W. L. Stewart, 73. E. B. McEuen, 74. J. M. Hart, 75. J. W. Reid, 76. T. W. Kellar, 77. D. M. McAnulty, 78. John B. Tally, 79. W. E. Dunaway, 80. S. H. Eshman, 81. W. W. Erwin, 82. T. M. Hendrix, 83. A. N. Eshman, 84. J. J. McClellan, 85. S. S. Boyer, 86. J. N. Trimble, 87. L. F. Smith, 88. G. M. Smith, 89. S. T. McCune, 90. S. W. James, 91. M. E. Russell, 92. J. B. Cawthorn, 93. P. B. Keith, 94. J. W. Garmon, 95. E. G. Stewart, 96. L. A. Lawrence, 97. W. E. Dooley, 98. J. E. Edwards, 99. R. L. Moore, 100. W. M. Myatt."

50. APPOINTMENT OF COMMITTEE TO VISIT THE PRESBYTERIAN GENERAL ASSEMBLY; Minutes of the General Assembly of the Cumberland Presbyterian Church, 1906: Beginning with line 22, page 160, of said record, with the words, 'Your Committee,' ending with line 35, page 160, with the words, 'of the Commission,' and reading as follows:

"Your committee would also recommend that this Assembly appoint the following Commission to visit Des Moines, Iowa, and bear the salutations of this body to the General Assembly of the Presbyterian Church in the United States of America, the members of this Commission to bear their own expenses, to-wit: Moderator Dr. Ira. E. Landrith, Stated Clerk Rev. J. M. Hubbert, Dr. W. H. Black, Dr. B. P. Fullerton, Dr. S. M. Templeton, Dr. W. J.

Darby, Rev. J. Frank Smith, Rev. L. C. Kirkes, Rev. W. J. Fisher, Rev. Prof. W. P. Bone, Rev. J. E. Aubrey, Rev. U. C. Howard, Rev. W. L. Darby, Rev. George S. Davis, Rev. J. D. Boone, Elders E. E. Beard, S. F. Stahl, T. A. White, Isaac H. Orr, John H. DeWitt and Jas. C. Biles. R. W. Binkley, Chairman.

On motion the name of Rev. R. W. Binkley was added to the foregoing list as a member of the Commission."

51. TELEGRAM TO THE PRESBYTERIAN ASSEMBLY, AT DES MOINES: beginning with line 2, page 160, of said record, with the words, 'On motion,' ending with line 17, page 160 thereof, with the words, 'J. M. Hubbert, Stated Clerk,' and reading as follows:

"On motion it was ordered that a message by wire should be sent to the Presbyterian Assembly, U. S. A., at Des Moines, Iowa, giving information as to the action taken on the "Joint Report on Reunion and Union," and the Stated Clerk afterward reported that a telegram had been sent, as follows:

'Decatur, Ill., May 23, 1906.

To Moderator General Assembly Presbyterian Church in the United States of America, Des, Moines, Iowa:

The General Assembly of the Cumberland Presbyterian Church has just adopted the joint report of the Committees on Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and it respectfully awaits notification of same action on the part of your venerable body.

Ira Landrith, Moderator,
J. M. Hubbert, Stated Clerk."

52. THE GRIDER RESOLUTION RESPECTING ADJOURNMENT: beginning with line 33, page 161 of said record, with the records, 'The following resolution,' ending with line 3, page 162 thereof, with the words, '*viva voce*,' and reading as follows:

"The following resolution was then presented by Dr. J. S. Grider:

Resolved, That this General Assembly do now adjourn *sine die*, as a separate General Assembly, to meet in and as part of the one hundred and nineteenth General Assembly of the Presbyterian Church in the United States of America, on the third Thursday of May, 1907, at 11 o'clock a. m. at the place chosen by the one hundred eighteenth General Assembly of the Presbyterian Church in the United States of America.

J. S. Grider,
D. M. Prendergast."

Elder D. M. Prendergast moved the adoption of the foregoing resolution, the motion was seconded by Rev. D. C. DeWitt, and the resolution was adopted by the Assembly, *viva voce*."

53. RESOLUTION CONCERNING PASTORIAL LETTER: Beginning with line 38, page 160, of said record, with the words, 'The following paper,' ending with line 12, page 161 thereof, with the words, 'executive committee,' and reading as follows:

"The following paper, offered by Elder Isaac H. Orr, was adopted:

Resolved, That the Committee on Pastorial Letter, or the executive committee created by it, be and it is hereby authorized to approve and audit the bills for the necessary legal expenses, including attorney's fees, incurred in the defense of the injunction suit brought by Joe H. Fussell, and others; and, when so audited and approved, said bills shall be paid, by the Assembly's Treasurer, or by the various Boards of the Church in such proportions as may be mutually agreed upon by said executive committee and said Boards, and

Resolved, further, That the said executive committee is hereby authorized, from time to time as occasion may require, to employ such legal counsel as in its judgment may be necessary to defend or prosecute any litigation which may arise in any part of the Church, during the ensuing year, and to concert other measures as it may deem necessary to protect and promote the interest of the Church; and

Resolved, further, That Rev. S. M. Templeton, D. D., be made vice-chairman of said executive committee."

54. FINAL ADJOURNMENT OF THE CUMBERLAND PRESBYTERIAN ASSEMBLY AS A SEPARATE ASSEMBLY, Minutes of the General Assembly of the Cumberland Presbyterian Church, 1906: Beginning with line 5, page 162, of said record, with the words, 'Moderator, Dr. Landrith,' ending with line 12, page 162 thereof, with the words, 'of America,' and reading as follows:

"Moderator Dr. Landrith then said: I now declare this General Assembly adjourned *sine die*, as a Separate Assembly, to meet in and as a part of the One Hundreth and Nineteenth General Assembly of the Presbyterian Church in the United States of America, on the third Thursday of May, 1907, at eleven o'clock a. m. at the place chosen by the One Hundred and Eighteenth General Assembly of the Presbyterian Church in the United States of America."

55. AMENDMENTS TO THE WESTMINSTER CONFESSION OF FAITH AND ACTIONS RELATING THERETO, Minutes of the General Assembly of the Presbyterian Church in the United States of America: 1902:—Beginning with line 32, page 284, of said record, with the words 'By order of the Day,' ending with line 15, page 289 thereof, with the words, 'and the benediction,' and reading as follows:

"By order of the Day, the Report of the Special Committee of the Revision of the Confession of Faith, was taken up. The

privileges of the floor were extended to members of the Committee who are not Commissioners. Speeches, except that of the Chairman of the Committee, were limited to ten minutes. The following resolutions were adopted, with two dissenting votes:

Resolved, 1. That so much of the report as relates to the eleven Overtures be adopted, with a view to the sending of the overtures to the Presbyteries in due form.

RESOLVED, 2. That the Brief Statement be adopted and printed with the approval of the Assembly for use in the Church, to instruct the people and to give a better understanding of our doctrinal beliefs.

The Report was then adopted as a whole, and is as follows:

The Special Committee on the Revision of the Confession of Faith respectfully presents the following report:

This Committee was appointed in pursuance of the action of the General Assembly of 1901 (See minutes p. 106), which action was embodied in the following recommendations:

"A. In view of these facts we recommend that a Committee, as provided for by the Form of Government Chap. XXIII, Section 3, be appointed by this Assembly.

"B. We recommend that this committee be instructed to prepare and to submit to the next General Assembly, for such disposition as may be judged to be wise, a brief statement of the Reformed Faith, expressed as far as possible in untechnical terms. The said statement is to be prepared with a view to its being employed to give information and a better understanding of our doctrinal beliefs, and not with a view to its becoming a substitute for, or an alternative of, our Confession of Faith.

"C. We further recommend that this Committee be instructed to prepare amendments of Chapter III; Chap. X, Section 3; Chapter XVI, Section 7, Chapter XXII, Section 3; and Chapter XXV, Section 6, of our Confession of Faith, either by modification of the text or by Declaratory Statement, so far as possible by Declaratory Statement, so as more clearly to express the mind of the Church, with additional statements concerning the love of God for all men, Missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrine set forth in our Confession and taught in the Holy Scriptures."

The Assembly also directed that this Committee should be composed of twenty-one persons, and itself named the following persons as members of it, viz: Ministers, Charles Dickey, D. D., Herrick Johnson, D. D., Samuel J. Nicolls, D. D., Daniel W. Fisher, D. D., William McKibben, D. D., George B. Stewart, D. D., Samuel P. Sprecher, D. D., Henry Van Dyke, D. D., Ruling phrey, William R. Crabbe, John E. Parsons, and Elisha Fraser; together with Henry Collin Minton, D. D., the Moderator of the Assembly, whom it designated as Chairman of the Committee. The Moderator was empowered to appoint the remaining six Elders—Justice John M. Harlan, Daniel R. Noyes, E. W. C. Hum-

members of the Committee, and accordingly the following persons were named, viz: John DeWitt, D. D., J. Ross Stevenson, D. D., D. W. Moffat, D. D., S. B. McCormick, D. D., Ruling Elders—John W. Foster and Charles T. Thompson.

The Committee has held five meetings, as follows: In Pittsburgh, June 18, 1901, where it was in session one day; in Saratoga, August 28, 1901, where it remained in session three days; in Washington, D. C., December 4, 1901, ten days; in Philadelphia Pa., February 5, 1902, eight days; and in Washington D. C., April 9, 1902, eight days.

The Committee has taken the utmost care that all its work, in substance and in form, should be within the scope of the instructions of the Assembly appointing it. In analyzing these instructions it at once found that the work assigned it was twofold; in the first place, it was to prepare "a brief statement of the Reformed Faith," to be submitted to this Assembly for such disposition as may be judged to be wise." The other part of its work was the preparation and submission to this Assembly of certain revisions of the Confession of Faith, in certain specified parts of it, and concerning certain specified subjects, by the method of textual modification or of Declaratory Statement, or of additional statements, undoubtedly with a view to their subsequent adoption or rejection by the Presbyteries and by the General Assembly, by Constitutional process and in due form, as provided for in the Form of Government, Chap. XXIII, Section 4.

In addressing itself to this second part of its work, the Committee has not been unmindful that its instructions gave distinct preference to the method of declaratory statement; however, the Committee was constrained to believe that it had some discretion in this matter first because of the qualifying clause "so as more clearly to express the mind of the Church." Accordingly it will be seen that this part of our Report includes all the methods named.

We recommend "Additional statements concerning the love of God for all men, Missions and the Holy Spirit," in the form of new chapters to be added to the Confession; we recommend a declaratory statement in reference to Chapter III and Chapter X, Section 3; and we recommend textual modifications in Chapter XVI, Section 7; Chapter XXII, Section 3, and Chapter XXV, Section 6.

It is improper to argue now in support of the decision at which the Committee arrived in this particular matter. It is enough to say that after prolonged and serious consideration, in comparison of the different methods proposed, the Committee was persuaded that the method agreed upon would most satisfactorily accomplish the end designed, and at the same time would most nearly meet the mind of the whole Church.

I. The Committee, therefore, recommends that the General Assembly transmit to the Presbyteries for their action, under the Form of Government, present Chapter XXIII, Section 4, the following Overtures: (Here appears the overtures, in number

eleven, wherein the amendments appear to the confession of Faith of the Presbyterian Church, U. S. A., which said amendments appear below in this record at pages 235-237).

II. Concerning the Brief Statement of the Reformed Faith which the Committee was directed to prepare and to submit to this Assembly, we beg to say that this has been by far the most difficult task assigned to us, and that it has occupied the greater part of the thirty days in which the Committee has been actually in session. The Assembly's instructions were explicit, and yet they left room for difference of view. Apart from the direction that it should be "brief" and "expressed as far as possible in untechnical terms," the committee was given to understand the kind of statement required, only by the Assembly's instructions that it was "to be prepared with a view to its being employed to give information and a better understanding of our doctrinal beliefs, and not with a view to its becoming a substitute for, or an alternative of, our Confession of Faith." These instructions are both positive and negative.

The Committee's understanding of the work thus enjoined upon it found expression in the following resolution which appears in its records, namely:

"Resolved, That it is the sense of this Committee that the Brief Statement of the Reformed Faith which the Assembly has ordered us to prepare, should be made with the view to inform and enlighten the people in regard to the significance and religious meaning of the Reformed Faith and not with the view of becoming a test of orthodoxy for ministers, elders and deacons."

The conception of the design of the statement to be prepared as thus presented, has influenced our action, and, as far as it could be so, controlled our conclusions. In this work few precedents were within reach. We were not to prepare a new Confession of Faith, or merely a condensed compendium of our doctrine, or a new standard of orthodoxy; much less a standard of new orthodoxy. The enjoined brevity made necessary the delicate task of selection. We could not include in such a statement everything we hold to be true, nor, on the other hand, could we confine ourselves to doctrines distinctively our own. Indeed, many of our most fundamental and vital doctrines we hold in common with the whole evangelical church; and, moreover, what is peculiar to our own faith is susceptible neither of being stated nor of being known except in the light of what we thus hold in common with other communions. Nor could we forget that the intellect is not the only organ of religious perception and knowledge. We must avoid reduplicating principle, even though it be in reduced compass, what we unquestionably already have. The three confessional formulae which we have received from the past, and which we hold in veneration, address themselves, primarily and predominately, to the logical faculty, and in a way preeminently successful; certainly, then, it was not simply another symbol framed on the same organizing principles of statement and in systematic excellence, which the

Assembly had in mind, or which the present condition of the Church calls for.

Accordingly we have endeavored to introduce in some degree into our work a different principle of expression and so to bring out more plainly the evangelical aspects of our faith, we have aimed to connect truth with life, and to give to our doctrinal elements a personal reference. We have tried to make the Statement not intellectual only, but also devotional in its conception and form. We would not have it first of all theological, although we have constantly endeavored to preserve intact the substance of the truth as we hold it. There has been neither desire nor disposition to disobey the Assembly's injunction, that we should "in no way impair the integrity of the system of doctrines set forth in our Confession and taught in the Holy Scripture."

The Committee presents this statement to the Assembly and to the Church, acknowledging that it has found it easier to exercise the critical than the constructive faculty in dealing with confessional literature. It is probably true that the result of our work pleases no member of the Committee exactly; and it would be presumption to hope that any one else should be entirely and in every particular satisfied. Every member of the Committee surrendered to the others, not principles, but preferences. Otherwise, the Assembly would receive twenty-one different statements of our doctrine instead of one. If we had had more time we could, doubtless have produced a more satisfactory result, but we were resolved, if possible, to obey our instructions, both in the letter and in the spirit. We do not affirm that there are no imperfections in this statement; we are confident only in the consciousness that our purpose has been one of loyalty to our divine Lord and to our beloved Church, and our prayer is that, whatever may be the outcome of our labors, the truth of God to which our Church is called to testify shall ever be held in grateful allegiance and in loving reverence. The committee has the honor to submit, "for such disposition as may be judged to be wise," the following as a

BRIEF STATEMENT OF THE REFORMED FAITH.

(This statement which here occurs here in this document is also set out in full at pages 120-123 in this record).

All of which is respectfully submitted.

HENRY COLLIN MINTON, Chairman; Charles A. Dickey, Herrick Johnson, Samuel J. Niccolls, D. W. Fisher, D. W. Moffat, S. B. McCormick, John M. Harlan, Daniel R. Noyes, William McKibbin, George B. Stewart, S. P. Sprecher, Henry Vandyke, *John Dewitt, ‡J. Ross Stevenson, E. W. C. Humphrey, William R. Crabbe, John E. Parsons, Elisha A. Fraser, John W. Poster, Charles T. Thompson.

*In signing the report of the Assembly's Committee on Revision, I except as follows: (1) I am opposed to the verbal amendment of the seventh section of Chapter XVI of the Confession.

(2) I think it unwise to erect into a church doctrine our belief that all who die in infancy are saved. (3) I do not think that the second sentence of Article X of "the brief and untechnical statement" (the article entitled "Of the Holy Spirit") accurately states the "Reformed Faith."

John DeWitt.

¶After signing this report on April 19, 1902, Dr. Stevenson forwarded to the Moderator of the General Assembly his formal resignation as a member of this Committee. In doing so, he stated as his reason his anticipated transfer of membership from the Synod of Missouri to the Synod of New York, which latter Synod already had its full representation on the Committee under the provision of the Form of Government Chapter XXIII, Section 3. He desired no question of constitutionality should be raised on account of this change.

Upon completion of the consideration of the subject of Revision the Assembly spent a season in thanksgiving and prayer. Rev. Herrick Johnson, D. D., and Rev. Charles A. Dickey, D. D. led in prayer, the Moderator read the 133rd Psalm, the congregation sang the 100th Psalm, and Rev. R. R. Booth D. D., closed the exercises with prayer for the church Universal, and the benediction."

56. BRIEF STATEMENT OF THE REFORMED FAITH, Minutes of the General Assembly of the Presbyterian General Assembly, 1902. Beginning with line 1, page 202, of said record, with the words, "Brief Statement," ending with line 22, page 205 thereof, with the words, "J. M. Hubbert, S. C.," and reading as follows:

"BRIEF STATEMENT OF THE REFORMED FAITH.

Not a part of the Confession of Faith, but Adopted by the General Assembly of the Presbyterian Church U. S. A., "To instruct the People and to give a Better Understanding of Our Doctrinal Beliefs."

(Referred to in Concurrent "Declarations," p. 63.)

Article I. Of God.

"We believe in the ever-living God, who is a Spirit and the Father of our spirits; infinite, eternal and unchangeable in His being and perfection; the Lord Almighty, most just in all His ways, most glorious in holiness, unsearchable in wisdom and plenteous in mercy, full of love and compassion and abundant in goodness and truth. We worship Him, Father, Son and Holy Spirit, three persons in one Godhead, one in substance and equal in power and glory.

Article II. Of Revelation.

"We believe that God is revealed in nature, in history and in the heart of man; that he has made gracious and clearer revelations of Himself to men of God who spoke as they were moved by the Holy Spirit; and that Jesus Christ, the Word made flesh, is the brightness of the Father's glory and the express image of His person. We gratefully receive the Holy Scriptures, given by

inspiration to be the faithful record of God's gracious revelations and the sure witness to Christ, as the Word of God, the only infallible rule of faith and life.

Article III. Of the Eternal Purpose.

"We believe that the eternal, wise, holy, and loving purpose of God embraces all events, so that while the freedom of man is not taken away nor is God the author of sin, yet in His providence He makes all things work together in the fulfillment of His sovereign design and the manifestation of His glory; wherefore, humbly acknowledging the mystery of this truth, we trust in His protecting care and set our hearts to do His will.

Article IV. Of the Creation.

"We believe that God is the creator, upholder, and governor of all things; that He is above all His works and in them all, and that He made man in His own image, meet for fellowship with Him, free and able to choose between good and evil, and forever responsible to His Maker and Lord.

Article V. Of the Sin of Man.

"We believe that our first parents being tempted, chose evil, and so fell away from God and came under the power of sin, the penalty of which is eternal death; and we confess that by reason of this disobedience, we and all men are born with a sinful nature, that we have broken God's law, and that no man can be saved but by His grace.

Article VI. Of the Grace of God.

"We believe that God, out of His great love for the world, has given His only begotten Son to be the saviour of sinners, and in the Gospel freely offers His all-sufficient salvation to all men. And we praise Him for the unspeakable grace wherein He has provided a way of eternal life for all mankind.

Article VII. Of Election.

"We believe that God, from the beginning in His own good pleasure, gave to His Son a people, an innumerable multitude, chosen in Christ unto holiness, service, and salvation; we believe that all who come to years of discretion can receive this salvation only through faith and repentance, and we believe that all who die in infancy, and all others given by the Father to the Son who are beyond the reach of the outward means of grace, are regenerated and saved by Christ through the spirit, who works when and where and how he pleases.

Article VIII. Of our Lord Jesus Christ.

"We believe in and confess the Lord Jesus Christ, the only Mediator between God and man, who, being the Eternal Son of God, for us men and for our salvation become truly man, being conceived by the Holy Ghost and born of the Virgin Mary, without sin; unto us He has revealed the Father, by His Word and

Spirit making known the perfect will of God for us He fulfilled all righteousness and satisfied eternal justice, offering himself a perfect sacrifice upon the cross to take away the sin of the world; for us He rose from the dead and ascended into heaven, where he intercedes for us; in our hearts, joined to Him by faith, He abides forever as the indwelling Spirit, over us, and over all of us, He rules; wherefore, unto Him we render love, obedience, and adoration as our Prophet, Priest and King forever.

Article IX. Of Faith and Repentence.

"We believe that God pardons our sins and accepts us as righteous solely on the ground of perfect obedience and sacrifice of Christ, received by faith alone, and that this saving faith is always accompanied by repentence, wherein we confess and forsake our sins with full purpose of, and endeavor after, a new obedience to God.

Article X. Of the Holy Spirit.

"We believe in the Holy Spirit, the Lord and Giver of Life, who moves everywhere upon the hearts of men, to restrain them from evil and to incite them unto good, and whom the Father is ever willing to give unto all who ask Him. We believe that He has spoken by holy men of God in making known His truth to men for their salvation; that through our exalted Saviour, He was sent forth in power to convict the world of sin, to enlighten men's minds in the knowledge of Christ, and to persuade and enable them to obey the call of the Gospel, and that he abides with the church, dwelling in every believer as the spirit of truth, of holiness and of comfort.

"Article XI. Of the New Birth and the New Life.

"We believe that the Holy Spirit only is the author and source of the new birth, we rejoice in the new life, wherein He is given unto us as the seal of sonship in Christ, and keeps loving fellowship with us, helps us in our infirmities, purges us from our faults, and ever continues His transforming work in us until we are perfect in the likeness of Christ, in the glory of the life to come.

"Article XII. Of the Resurrection and the Life to Come.

"We believe that in this life to come the spirits of the just, at death made free from sin, enjoy immediate communion with God and the vision of His glory; and we confidently look for the general resurrection in the last day; when the bodies of those who sleep in Christ shall be fashioned in the likeness of the glorious body of their Lord, with whom they shall live and reign forever.

"Article XIII. Of the Law of God.

"We believe that the law of God, revealed in the Ten Commandments, and more clearly disclosed in the words of Christ, is forever established in truth and equity, so that no human work shall abide except it be built on this foundation. We believe that God requires of every man to do justly, to love mercy and walk

humbly with his God, and that only through this harmony with the will of God shall be fulfilled that brotherhood of men wherein the kingdom of God is to be made manifest.

"Article XIV. Of the Church and Sacraments.

"We believe in the Holy Catholic Church, of which Christ is the only Head. We believe that the Church Invisible consists of all the redeemed, and that the Church Visible embraces all who profess the true religion together with their children. We receive to our communion all who confess and obey Christ as their divine Lord and Saviour, and we hold fellowship with all believers in Him.

"We receive the sacraments of Baptism and the Lord's Supper, alone divinely established and committed to the Church, together with the Word, as means of grace, made effectual only by the Holy Spirit, and always to be used by Christians with prayer and praise to God.

Article XV. Of the Last Judgment.

"We believe that the Lord Jesus Christ will come again in glorious majesty to judge the world and make a final separation between the righteous and the wicked. The wicked shall receive the eternal award of their sins, and the Lord will manifest the glory of His mercy in the salvation of His people and their entrance upon the full enjoyment of eternal life.

"Article XVI. Of Christian Service and the Final Triumph.

"We believe that it is our duty, as servants and friends of Christ to do good unto all men, to maintain the public and private worship of God, to hallow the Lord's Day, to preserve the sanctity of the family, to uphold the just authority of the state, and so live in all honesty, purity and charity that our lives shall testify to Christ. We joyfully receive the word of Christ bidding His people go into all the world and make disciples of all nations, and declare unto them that God was in Christ reconciling the world unto Himself, and that He will have all men to be saved and to come to the knowledge of the truth. We confidently trust that by His power and grace all His enemies and ours shall be finally overcome, and the kingdoms of this world shall be made the kingdom of God and of His Christ. In this faith we abide, in this service we labor, and in this hope we pray.

"Even so, come, Lord Jesus.

"Attest:

"Henry Van Dyke,

Moderator General Assembly, 1902.

"W. H. Roberts,

"Stated Clerk.

J. M. Hubbert, S. C."

57. RESOLUTION PROVIDING COMMITTEE ON UNION; Minutes of the General Assembly of the Presbyterian Church, 1903—beginning with line 10, page 290, of said record, with the word, 'Whereas,' ending with line 34, page 290, thereof, with the word 'Adopted,' and reading as follows:

"Whereas, This Assembly earnestly desires to commend and promote this Christian co-operation and also practically to advance the cause of Church Union by confederation, and, where possible, by consolidation among the Churches of the Reformed Faith, which are most earnestly akin in doctrine and organization; therefore be it

Resolved, 1. That a Committee of seven, four ministers and three elders, be appointed by the Moderator to consider the whole subject of co-operation, confederation and consolidation with other churches.

Resolved, 2. That Overtures Nos. 89-93, 101-105, 136 and 157 be placed in the hands of this Committee; and that they be instructed to enter into correspondence with any Churches of the Reformed family with whom, in the judgment of the Committee, such correspondence would be likely to promote closer relations, and also to confer with the Congregational Church in regard to the practical improvement of the plan of comity referred to in some of the Overtures.

Resolved, 3. That this Committee shall report to the next Assembly such plans and measures as seem to them wise, proper and profitable for the advancement of fraternal relations, for the increase of harmonious work, and, if God shall open the way, and incline the hearts of the Churches, thereto, for the reunion of those who hold the same faith and order in the service of Christ. Adopted."

58. APPOINTMENT OF COMMITTEE ON FRATERNITY AND UNION; Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1903, page 169—beginning with line 9, page 128, of said record, with the words, 'The Moderator,' ending with line 14, page 128, thereof, with the words, 'E. S. Wells,' and reading as follows.

"The Moderator announced the following Committees: * *

* On Church Co-operation and Union: Ministers—Wm. H. Roberts, D. D., W. N. Page, D. D., John R. Davies, D. D., Wilton Merle Smith, D. D., Reuben Hartley, D. D.; Elders—Elisha H. Perkins, Reuben Taylor, E. S. Wells."

59. NOTIFICATION BY CUMBERLAND PRESBYTERIAN ASSEMBLY OF APPOINTMENT OF COMMITTEE ON UNION, AND RESPONSE THERETO; Minutes of the General Assembly of the Presbyterian Church, 1903—beginning with line 39, page 290, of this record, with the words, 'Nashville, Tenn.,' ending with line 23, page 291, with the words, 'W. H. Roberts, Stated Clerk,' and reading as follows:

"Nashville, Tenn., May 27, 1903.

To the General Assembly of the Presbyterian Church in the U. S. of America, Los Angeles:

The General Assembly of the Cumberland Presbyterian Church today adopted the following resolution, and after the vote the Assembly joined in signing the Doxology, and was led in prayer of thanksgiving for unanimity of action."

RESOLVED, That a Committee of nine on Presbyterian fraternity and union be appointed by this Assembly, to confer with such like Committee as may be appointed by other Presbyterian bodies in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States; and if in any particular case, after conference and investigation, union shall seem to be desirable and practicable, to suggest suitable measures for its accomplishment, and to report such basis of union as may be mutually agreed upon to the next General Assembly.

J. M. Hubbert, Stated Clerk."

RESPONSE TO ABOVE OFFER, Min. Presb'y Church, 1903, p. 122:

EXHIBIT 23.

"Los Angeles, Cal., May 27, 1903.

To the General Assembly of the Cumberland Presbyterian Church, Nashville, Tenn.

The General Assembly at Los Angeles receives with cordial congratulations your message announcing appointment of Committees on Presbyterian fraternity and union, and has appointed a similar Committee for the same great purposes.

R. F. Coyle, Moderator,

Wm. H. Roberts, Stated Clerk."

60. ACCEPTANCE OF THE REPORT OF THE COMMITTEE ON UNION; Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1904—beginning with line 19, page 300, of said record, with the words, 'The Special,' ending with line 21, page 300 thereof, with the words, 'was accepted,' and reading as follows:

"The Special Committee on Church Co-operation and Union through its Chairman, Rev. Wm. H. Roberts, D. D., presented its report, which was accepted."

61. ACTION ON REPORT OF COMMITTEE ON UNION; Minutes General Assembly of the Presbyterian Church in the United States of America, 1904—beginning with line 43, page 170 of said record, with the words, 'The Report on Union,' ending with line 3, page 172 thereof, with the words, 'pages 128-131,' and reading as follows:

"The Report on Union with the Cumberland Presbyterian Church was taken up, being Part 5 of the Report of the Committee on Church Co-operation and Union. Resolutions were moved and seconded setting forth the matter to be voted upon by the Assembly with reference to the Plan of Union. After discussion the hour fixed for the vote having arrived, the Resolutions were adopted, as follows:

RESOLVED 1. That the Joint Report on Union with the Cumberland Presbyterian Church be and hereby is adopted.

RESOLVED 2. That the following Basis of Union be sent down to the Presbyteries, which shall be required to meet on or before April 30, 1905, to express their approval or disapproval of the same by a direct answer in the affirmative or negative to this question:

Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, on the following basis: The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical Standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice?

Each Presbytery shall before the 10th day of May, 1905, forward to the Stated Clerk of the Assembly a statement of its vote on the said Basis of Union.

RESOLVED, 3. That the Report of the vote of the Presbyteries shall be submitted to the General Assembly meeting in 1905, and if said Assembly shall find and declare that the foregoing Basis of Union has been approved by two-thirds of the Presbyteries of this Church, then the necessary steps shall be taken, if the way be clear, to complete the union with the Cumberland Presbyterian Church.

RESOLVED, 4. That the Assembly in connection with this whole subject of union with the Cumberland Presbyterian Church places on record its judgment, that the revision of the Confession of Faith effected in 1903, has not impaired the integrity of the system of doctrine contained in the Confession and taught in Holy Scripture, but was designed to remove misapprehensions as to the proper interpretation thereof.

RESOLVED, 5. That in approving the Overture looking to a change in the Form of Government concerning the territorial bounds of Presbyteries and Synods, this Assembly confirms its complete freedom from prejudice against any race and from any desire or purpose to bring about a separation from our Church, or from representation in the General Assembly, of any class or race of Presbyterians; but on the other hand, our purpose is to bring together in one Church members of all races and classes.

The Report of the Special Committee on Co-operation and Union, except the portion recommitted, was adopted as a whole, and is as follows:

The Committee of Church Co-operation and Union respectfully reports to the General Assembly as follows:

(Same Report as hereinabove at pages 67-70.)"

62. FOX PROTEST; Minutes General Assembly of the Presbyterian Church in the United States of America, 1904—beginning with line 23, page 298 of said record, with the words, 'Rev. John D. Fox,' ending with line 15, page 300 thereof, with the words, 'Johnston, Committee,' and reading as follows:

"Rev. John Fox, D. D., on behalf of himself and others whose names are annexed, presented the following protest:

We, the undersigned, ministers and ruling elders, hereby respectfully record our deliberate and solemn protest against the action taken by the General Assembly in adopting the Report of the Committee on Union and Reunion, so far as it relates to union with the Cumberland Presbyterian Church; for the following reasons *inter alia*:

First, and chiefly because the Plan of union in its first Concurrent Declaration involves an interpretation of the doctrinal Standards of the Church. We feel that the Constitutional right of the Assembly to make this interpretation is open to grave question.

Apart from this the Declaration affirms an agreement existing between the systems of doctrine contained respectively in our own Confession of Faith and that of the Cumberland Presbyterian Church sufficient to warrant union between the two churches; whereas, in fact, the two systems of doctrine are antagonistic to each other, especially as to the doctrine of the divine decrees. A union founded on such a mistake is not likely to be permanently satisfactory.

Second, we protest because grave practical difficulties affecting the well-being of the Church and the orderly administration of its affairs and menacing many sacred and precious interests, have not received from either the Committee or the Assembly such a degree of careful consideration as is demanded by their exceeding importance.

John Fox, Francis L. Patton, Rufus S. Simmons, Job C. Lawrence, H. S. Prentice Nichols, Charles H. Matthews, George B. Carr."

ANSWER TO FOX PROTEST, Min. Presb'y Church U. S. A., 1904, pp. 175-176.

EXHIBIT 29.

"The Committee appointed to prepare an answer to the protest of Rev. John Fox, D. D., and others, against the adoption of the Plan of Union, presented the following, which was adopted:

'Your Committee appointed to prepare a brief answer to the protest offered by certain members of this Assembly against its action in adopting the Report of the Committee on Union and Re-

union insofar as it relates to union with the Cumberland Presbyterian Church, would respectfully submit the following answer:

1. The protest is made "first and chiefly, because the Plan of Union in its first Concurrent Declaration involves an interpretation of the doctrinal Standards of the Church." The protestants "feel that the Constitutional right of the Assembly to make this interpretation is open to grave question." Your Committee would answer that this protest asserts in effect that the supreme court of the church is not competent to interpret its doctrinal Standards. This mere statement is of itself sufficient to answer to the protestants. It is not only the right, but the duty of the General Assembly.

2. The protestants assert that "the two systems of doctrine" contained respectively in the Confessions of Faith of the Cumberland Presbyterian Church and our own church "are antagonistic to each other, especially in the instance of the doctrine of divine decrees." This is simply a difference of opinion. The deliberations of the Assembly involved the judgment of the Commissioners as to this very matter. The overwhelming vote of the Assembly in adopting the Report of the Committee indicated that the Assembly as a body does not agree with the protestants.

3. The protestants assert that "grave practical difficulties, affecting the well-being of the church and the orderly administration of its affairs and menacing many sacred and precious interests, have not received from either the Committee or the Assembly such a degree of careful consideration as is demanded by their exceeding importance."

For answer it should be said that this action of the Assembly is to give expression to the general attitude of our church toward the proposal of the Cumberland Presbyterian Church to effect organic union of the two bodies. Both churches recognize the fact that numerous details involved in the consummation of this union must have careful consideration after the Presbyteries have taken action upon the Overture sent down by both Assemblies. To withhold our expression of readiness to proceed toward the completion of the negotiations thus hopefully begun, because of details whose consideration would naturally be adjusted by subsequent conference between the two bodies, would be to betray a lack of mutual trust between brethren which we do not entertain.

Let the great fundamental fact be made clear that both bodies desire to advance every possible step toward union, as it has now been announced to the world, and no doubt need be entertained that the Spirit of God will guide the task of harmonious adjustment of all necessary details. Let us give full place to our confident faith in the guidance of the Spirit of Christ and the Christian love of our brethren in Him.

J. D. Moffatt, R. F. Coyle, Howard Agnew Johnston, Committee."

63. REPORT OF STATED CLERK ON PRESBYTERIAL VOTE ON UNION, Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1905: Beginning with line 39, page 140 of this record, with the words, 'The Stated Clerk,' ending with line 23, page 141, thereof, with the words, 'Wm. H. Roberts, Stated Clerk,' and reading as follows:

"The stated Clerk reported the vote of the Presbyteries on the Overture sent down by the last Assembly on the Reunion and Union of the Presbyterian Church in the United States of America with the Cumberland Presbyterian Church, as follows:

The Stated Clerk reports this Assembly the vote of the Presbyteries on the Overture sent down by the last General Assembly on the subject of the Reunion and Union of the Presbyterian Church in the U. S. A. and the Cumberland Presbyterian Church. The last General Assembly, *inter alia*, adopted the following resolutions, viz:

(The resolution consists of the basis of union identical with that above set out in the proceedings of the General Assembly of the Cumberland Church above at pages 67 and 68).

The Assembly of 1904 also adopted the following Resolution, viz: Resolved, 'That the Report of the vote of the Presbyteries shall be submitted to the Stated Clerk of the General Assembly meeting in 1905, and if said Assembly shall find and declare that the foregoing basis of union has been approved by two-thirds of the Presbyteries of this Church, then the necessary steps shall be taken, if the way be clear, to complete the union with the Cumberland Presbyterian Church.'

The vote of the Presbyteries on Union with the Cumberland Presbyterian Church on the foregoing basis is as follows:

In the affirmative, 194, in the negative, 39; reporting no action 2; conditional, 1; making no answer, 5. Total 241.

(The report then recommends the appointment of a Committee to Canvass the Presbyterial vote).

Respectfully submitted,

Wm. H. Roberts, Stated Clerk."

64. COMMITTEE ON CANVASS APPOINTED AND ITS REPORT, same minutes: Beginning with line 26, page 141, of said record, with the words, 'A Resolution,' ending with line 16, page 143 thereof, with the words, 'such request,' and reading as follows:

(A resolution was then adopted by the General Assembly of the Presbyterian Church to appoint a committee on canvass of the presbyterial vote on union).

The Moderator appointed as said Committee on Canvass; Elder Henry W. Jessup, Chairman; Ministers Charles E. Bronson, D. D., John C. Laughlin, Davis M. Skilling, D. D., and Elder Henry S. Osborne.

REPORT OF COMMITTEE ON CANVASS:

'The Committee on Canvass of the Vote of the Presbyteries on Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, through its Chairman, Henry W. Jessup, Esq., presented its Report, which was accepted.

The Canvass of the Vote and the Form of Declaration presented by the Committee were adopted, and in accordance therewith the Moderator made the following formal and official declaration, to-wit:

'I hereby declare the Overture No. 8 sent down by the Assembly of 1904 to the Presbyteries, in the form set forth at pages 119 and 136 in the Minutes of said Assembly, has been adopted by more than the required two-thirds vote in the affirmative, and accordingly constitutes the basis of the proposed union between our Church and the Cumberland Presbyterian Church, according to the Plan adopted by the Assembly of 1904.'

The remaining resolutions as proposed in the Report were adopted.

The Report as a whole was adopted. It is as follows: Your Committee appointed to canvass and report the vote of the Presbyteries on Overture No. 8, sent down by the last General Assembly, on the subject of the Reunion and Union of the Presbyterian Church in the U. S. A. and the Cumberland and Presbyterian Church, accompanied by a form of declaration in accordance with the terms of the Plan of Union, and also to report what further action may be necessary, do respectfully report:

1. We have canvassed the vote as reported by the Stated Clerk and find that out of a total of 241 Presbyteries, 194 Presbyteries or more than the two-thirds majority required, have voted in the affirmative; 39 have voted in the negative; 2 have taken no action, 1 has given conditional assent, and from 5 no answer has been received. (Annexed hereto is an alphabetical list marked A., showing the name and action of each Presbytery).

2. We recommend accordingly for adoption by the Assembly the following declaration in accordance with the terms of the Union (See minutes, 1904, p. 136):

"This assembly, having received and duly examined the vote of its Presbyteries on the Basis of Union of the Presbyterian Church in the U. S. A. and Cumberland Presbyterian Church, does hereby find and declare that more than the required two-thirds majority of its Presbyteries have approved the Basis of Union submitted to them by the Assembly of 1904, to-wit:"

"The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the U. S. A., as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice,' and that the Presbyterian Church in the U. S. A. has complied with all the requirements of the Plan of Union

adopted by the Assembly of 1904 (see Joint Report, Minutes of 1904, p. 135 *et seq.*) and this Assembly declares its readiness to take action accordingly."

And your committee recommends the following further action: Resolved, That this whole matter be now recommitted to the Assembly's Committee on Church Co-operation and Union, for conference with the Committee on Fraternity and Union of the Cumberland Presbyterian Church, or other similar Committee appointed or to be appointed.

That such committee be increased in its number to twenty-one, and that the Moderator report to this Assembly the name of the additional members.

That it be the duty of such Committee to ascertain what steps are necessary to complete the Union, and to report with its recommendations to the 118th General Assembly, when convened in 1906, the particular details whereby organic union may be affected as to assure to the united Church all the legal and corporate rights and powers which the separate Churches now possess" (see paragraph 2 of Basis, Minutes 1904, p. 136) and whereby the corporate rights now held by the two General Assemblies and by their Boards and Committees may be permitted by law" (see Seventh Concurrent Declaration, Minutes 1904, p. 138).

Resolved further, That the said Committee be and it hereby is authorized to confer with the Trustees of the General Assembly if and when necessary, in order to safeguard the corporate or property rights of the Presbyterian Church in the U. S. A., upon and after the completion of the proposed Union and the Trustees of the General Assembly are hereby directed if so requested to confer, to comply with such request. * * *

65. REPORT OF SPECIAL COMMITTEE ON CHURCH CO-OPERATION AND UNION, Minutes General Assembly of the Presbyterian Church in the United States of America, 1906, pp. 15 and 16: Beginning with line 5, page 307, of said record, ending with line 35, page 307, thereof, with the words, 'Presbyterian Church, and reading as follows:

"Rev. W. H. Roberts, D. D., Chairman of the Special Committee on Church Co-operation and Union, presented a Special Report, which was adopted, and is as follows:

"WHEREAS, in 1904-5, the Presbyterian Church in the United States of America adopted certain amendments to its Form of Government and Book of Discipline with reference to Judicial Commissions, etc.; and

Whereas, The said Church has previously entered into a solemn agreement with the Cumberland Presbyterian Church for Reunion and Union on a basis, specifically defined and conditioned, and had provided that said basis should be binding upon the fulfillment of the conditions; and

WHEREAS, Said conditions have been fulfilled and said basis has become binding.

Now the General Assembly of the Presbyterian Church in the United States of America hereby adjudges and solemnly declares that, by virtue of said prior agreement fixing the basis of Reunion and Union as aforesaid, under which organic union is now to be consummated, the amendments above referred to and not contemplated as a part of said basis, upon the consummation of Union will be forthwith no longer in force, nor will they be operative in the reunited church as any part of its ecclesiastical standards, until and unless resubmitted to the Presbyteries of the reunited church, and all Presbyteries and Synods of the Church in all cases hereinafter arising to act under the standards as they existed on May 27, 1904, except as amended in respect to Chapter 10, Section 2, Form of Government, in relation to the erection of separate Presbyteries and Synods for different races and nationalities."

The Stated Clerk was authorized to communicate this action to the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church."

66. REPORT OF THE COMMITTEE ON UNION AND ACT OF THE ASSEMBLY ADOPTING THE SAME, Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1906: Beginning with line 1, page 308 of said record, with the words, 'Reunion and Union,' ending with line 16, page 310 thereof, with the words, 'dissenting votes,' and reading as follows:

"REUNION AND UNION WITH THE CUMBERLAND PRESBYTERIAN CHURCH.

(The first part of this subdivision is taken up merely with a recital of the meetings of the Presbyterian Committee, and is not relevant to this case.)

The part entitled STEPS TO COMPLETE REUNION is as follows:

The Committee was instructed to ascertain the steps necessary to complete the Reunion and Union. The several steps are indicated clearly on the Joint Report, recommending the adoption by the two Assemblies of successive resolutions containing the following joint declarations and agreements, viz:

1. A joint declaration that the standards of the Presbyterian Church in the U. S. A. have been constitutionally adopted by the Cumberland Presbyterian Church.

2. A joint declaration that said standards, upon the declaration of the Reunion and Union by the Moderators of the two Assemblies, are obligatory upon the Cumberland Presbyterian Church in all its parts and as a whole.

3. The joint agreement that the General Assembly of the reunited Church to meet in the year 1907 is to be and will be the

One Hundred and Nineteenth General Assembly of the Presbyterian Church in the U. S. A.

4. The joint agreement that all of the Presbyteries of the re-united Church are to elect Commissioners to the said One Hundred and Nineteenth General Assembly on the basis contained in the Form of Government of the Presbyterian Church in the U. S. A.

5. The joint agreement that all the Boards, Committees, Trustees and ecclesiastical agencies reporting to the General Assembly of the Cumberland Presbyterian Church are to report hereafter to the General Assemblies of the Presbyterian Church in the U. S. A.

6. The joint agreement that the consolidation of the Boards, Committees, Trustees and other ecclesiastical or corporate agencies of the Cumberland Presbyterian Church with the similar ecclesiastical or corporate agencies of our own Church shall be effected as soon as feasible, under the direction of the General Assembly of the Presbyterian Church in the U. S. A.

7. The joint agreement that all Benevolent and Missionary Boards of the reunited Church are to carry on their work in harmony during the year 1906-7, report to be made by each of the said Boards to the General Assembly of 1907 of the Presbyterian Church of the U. S. A.

8. The joint agreement that the Stated Clerk of the General Assembly of the Presbyterian Church in the U. S. A. shall place the names of the Synods and Presbyteries connected with the Cumberland Presbyterian Church on the Roll of Synods and Presbyteries of the General Assembly of the Presbyterian Church in the U. S. A. of 1906, and shall make up the Roll of the Assembly of 1907, and said Stated Clerk to have the assistance in these matters of the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church of 1906.

9. The joint agreement that a declaration of the Reunion and Union of the two Churches shall be promptly made by the Moderators of the two Assemblies of 1906, at such time in the sessions of the respective Assemblies as shall be determined upon by telegraphic messages duly transmitted and exchanged.

10. The joint agreement that after the declaration of Reunion and Union shall have been made, the Cumberland General Assembly shall have adjourned *sine die*.

Such, consi ly stated, are the steps needed to complete the Reunion and Union of the Cumberland Presbyterian Church with the Presbyterian Church of the U. S. A.

Before presenting the Joint Report your Committee gladly acknowledges the delightful fellowship its members have enjoyed for more than three years with their brethren of the Committee on Fraternity and Union of the Cumberland Presbyterian Church. We have in truth dwelt together in unity. Our joint labors have been carried forward with faith towards God, and with brotherly affection towards one another. The object of our work has been the bringing together of long separated brethren, who, forgetting

the things which are behind and reaching forth unto those things which are before, shall as one army of the living God press toward the mark for the prize of the high calling of God in Christ Jesus. In the hope that He who hath called us into an holy calling will bless our labors in their outcome, to the highest welfare of the Re-united Church and to His own glory, we herewith submit the Joint Report of the two Committees on Reunion and Union.

(Here follows the Joint Report on Reunion and Union, 1906, which is herein given in full above at page 150 of this record).

The Committee respectfully informs the Assembly that should the preceding report on Reunion and Union be adopted by both Assemblies, and the Reunion and Union therein recommended be completed, it will present a supplementary Report.

The Committee in closing its Report, places on record its gratification over the increasing acknowledgement of all Churches, and especially in the Churches of the Presbyterian family, of the spiritual unity of the universal Church of Jesus Christ and the obligations of Christian brotherhood. The historic position of our own Church from its establishment has been clear as to Church Unity. We have always maintained that the visible Church, which also is Catholic or Universal under the Gospel (not confined to one nation, as before under the law), consists of all those throughout the world that profess the true religion, together with their children; and is the Kingdom of the Lord Jesus Christ, the house and family of God. Expressing the hope that there may be increasing acknowledgement by all Christians of the true nature of the Church Universal and action in accordance therewith your committee respectfully asks to be continued with a view to rendering further service to the great Head of the Church, in the realization of His desire for His people "that they may all be one."

(Here follows the signatures of all the members of the Committee).

The Special Committee on Church Co-operation and Union, through its Chairman, Rev. W. H. Roberts, D. D., presented its report, which was accepted.

Part V of the Report, being the Joint Report on Reunion and Union with the Cumberland Presbyterian Church, with all its recitals and resolutions, was adopted, with only two dissenting votes. * * *

67. RECEPTION OF COMMISSION FROM THE CUMBERLAND PRESBYTERIAN GENERAL ASSEMBLY, Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1906, pp. 171-172: Beginning with line 6, page 177 of this record, with the words, 'The Report,' ending with line 32, page 177 thereof, with the words, 'Cumberland Church,' and reading as follows:

"The Report of the Special Committee on the Indebtedness of the Witherspoon Building was presented and accepted. Pending its consideration the Order of the Day arrived, the Reception of the

Delegates appointed by the General Assembly of the Cumberland Presbyterian Church.

Rev. W. H. Roberts, D. D., introduced to the Moderator and the Assembly the members of the Delegation, as follows: Rev. Ira Landrith, LL. D., Moderator; Rev. J. M. Hubbert, D. D., Stated Clerk; Rev. W. J. Darby, D. D., Rev. J. Frank Smith; Rev. L. C. Kirkes; Rev. W. J. Fisher, Rev. Prof. W. P. Bone, Rev. J. E. Aubrey, Rev. U. C. Howard, Rev. W. L. Darby, Rev. George S. Davis, Rev. J. D. Boone; Elders, Hon. E. E. Beard, S. F. Stahl and T. A. White.

Addresses were delivered by the following members of the Delegation; Rev. Ira Landrith, LL. D., Rev. J. M. Hubbert, D. D. Rev. W. J. Darby, D. D., Rev. J. F. Smith, Rev. W. J. Fisher and Hon. E. E. Beard.

The Moderator repeated *verbatim* the formal Declaration of Reunion and Union made yesterday, and responded to the addresses of the Delegation.

After a cordial handclasp by the two Moderators, Drs. Corbett and Landrith, Dr. Corbett led the Assembly in a prayer of thanksgiving.

The Stated Clerk was authorized, in making up the Roll of the Presbyteries and Synods, where two of the same name occurred, to append the letter 'A' to those formerly connected with the Cumberland Church."

68. MOFFATT RESOLUTION, Minutes General Assembly of the Presbyterian Church in the United States of America, 1906: Beginning with line 42, page 175, of said record, with the words, 'The following deliverance,' ending with line 40, page 176 thereof, with the words, 'forward movement,' and reading as follows:

"The following deliverance, presented by Rev. J. D. Moffatt, D. D., was unanimously adopted:

The General Assembly of the Presbyterian Church in the United States of America, having added to its Roll the Synods and Presbyteries and Churches and ministers lately subject to the General Assembly of the Cumberland Presbyterian Church, and constituting said church; and earnestly desiring to retain in the membership of each particular church every one in connection therewith prior to the consummation of the reunion; and being apprehensive that some may be reluctant to acquiesce in what has now been effected, because of certain misapprehensions which should be removed, if possible, now solemnly declares:

1. That in the Presbyterian Church no acceptance of the doctrines of the Church is required of any communicant, beyond a personal faith in Jesus Christ as Son of God and Savior of the World, and a sincere acceptance of Him as Lord and Master.

2. That ministers, ruling elders and deacons, in expressing approval of the Westminster Confession of Faith as revised in 1903, are required to assent only to the system of doctrine contained therein, and not to every particular statement in it; and inas-

much as the two Assemblies meeting in 1904 did declare that there was then a sufficient agreement between the systems of doctrine contained in the Confession of the two churches to warrant the union of the two churches, therefore the change of doctrinal standards resulting from the union involves no change of belief on the part of any who were ministers, ruling elders or deacons in the Cumberland Presbyterian Church. Further, this Assembly specifically declares that, since the revision of 1903, by which the Confession of Faith was amended by change of its text, by a declaratory statement and by additional chapters, it is no longer allowable to interpret our system of doctrine in any fatalistic sense; nor are we willing to admit that such fatalistic interpretation was ever warranted, whatever misapprehensions may have existed in the mind of any person.

3. In view of the fact that reunion involves no change whatever in relations of communicants, ruling elders and deacons to their own particular Churches; and except in a few instances, none in their relations to their Presbyteries and Synods; and brings all into a General Assembly differing from their former Assembly only in size and its representation of a larger Church; this Assembly express the hope that all who have thus far opposed reunion may soon realize that they can engage heartily in the chief work that our Lord requires of us—the evangelization of the world—as never before, and with a prospect of a greater efficiency because they lay aside personal preferences in the interest of the union of Presbyterians in great forward movement."

69. LIST OF SYNODS AND ETC.: Beginning with line 41, page 176 of said record, with the words, 'List of Synods,' ending with line 49, page 176 thereof, with the words, 'its excessive length,' and reading as follows:

"LIST OF SYNODS, PRESBYTERIES, CHURCHES, MINISTERS AND OFFICERS OF THE REUNITED CHURCH, Min. Pres. Assembly, 1906, 800 to 900, inclusive. (Here follows a list according to Synods and Presbyteries of all the Churches composing the reunited church, both the former Presbyterian and the former Cumberland Presbyterian Church, and in like manner an alphabetical list of all the ministers of both these churches. The list is not here reproduced because of its excessive length.)"

70. OPENING ASSEMBLY OF THE UNITED CHURCH, Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1907, pages 3, 4: Beginning with line 26, page 131, of said record, with the words, 'The One Hundred,' ending with line 8, page 314, with the words, 'Roll of the Assembly,' and reading as follows:

"THE ONE HUNDRED AND NINETEENTH GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA met according to appointment in Memorial Hall, Columbus, Ohio, on Thursday, May

16, 1907, at 11 o'clock A. M. The Stated Clerk reported that the Moderator of the 118th General Assembly, Rev. Hunter Corbett, D. D., had returned to China under pressure announced that under the Rules of the Assembly the last Moderator present for the Presbyterian Church in the United States of America, being a Commissioner, viz., Rev. Robert F. Coyle, D. D. would preside.

In accordance with the recommendation of the two Assemblies of 1906 of the now reunited Church duly adopted upon the report of their joint Committee on Reunion and Union, the opening sermon was preached by Rev. Ira Landrith, D. D., LL. D., Moderator of the General Assembly of 1906 of the Cumberland Presbyterian Church, his text being Deut. XXXIII. 25: "Possess thou the west and the south."

After the sermon the Assembly was constituted by Rev. Robert F. Coyle, D. D., with prayer, all motions being put and declared adopted by him.

The Assembly took recess until 3 o'clock and was closed with prayer.

Thursday, May 16, 3 o'clock p. m.

The Assembly met, and was opened by prayer.

Upon the Report of the Permanent Committee on Commissions, the following ministers and elders were recognized as duly appointed commissioners, and their names were entered upon the

ROLL OF THE ASSEMBLY.

* * * * *

XXVI.

SYNOD OF MISSOURI.

Presbytery	Minister.	Ruling Elder.
Hannibal	Chas. B. Boving	S. S. McLaughlin
Kansas City	Jas. L. McKee	Dr. W. P. Cutler
	Geo. J. Donnell	W. B. Hale
Ozark	E. E. Stringfield	Curtis Wright
Platte	H. A. Sawyers, D. D.	E. H. White
	John A. Hatfield	Simon Meyers
St. Louis	F. W. Russell, D. D.	James S. Parks
	Chas. L. Chalfant	Arthur B. McMullin
	Jerrie Johnson	John H. Roth
White River.	W. D. Teaster	W. A. Nixon

XXVII.

SYNOD OF MISSOURI—A.

Chillicothe-A	J. T. Hood	J. N. Ballenger
Kirksville	J. C. Arnett	J. L. Witt
Lexington	Y. W. Whitsett	M. G. Wood
McGee	T. W. Baker	
Neosho-A	E. W. Lowe	Joe A. Prather
New Lebanon	W. H. Black, D. D.	Joseph Minter
Ozark-A	W. R. Russell	Lon Smith
Platte-A	S. T. Divinia	John P. McCammon
St. Louis-A	A. R. McClelland	N. R. Adriance
Salt River	L. N. Montgomery	O. M. Fry
Springfield-A	J. H. Doran	
West Plains	J. M. Glick	J. F. Porter
West Prairie	W. J. Hatfield, D. D.	C. L. Keaton."

71. DECLARATORY STATEMENTS ADOPTED BY THE GENERAL ASSEMBLY AND PRESBYTERIES OF THE CUMBERLAND PRESBYTERIAN CHURCH TO THE CONFESSION OF 1829: Beginning with line 24, page 319, of said record, with the words, 'Confession of Faith,' ending with line 25, page 322, thereof, with the words, 'for their authority,' and reading as follows:

"CONFESSION OF FAITH OF THE CUMBERLAND PRESBYTERIAN CHURCH, as revised and adopted by its General Assembly in 1829 and readopted by that Church in 1883, being now a standard of that Church. Declaratory Statement to Chapter III, p. 27, said Confession.

"We think it better, under the head of Decrees, to write what we know to be incontrovertible from the plain word of God, than to darken counsel by words without knowledge. We have elsewhere (See 3rd edition of Buck's Theological Dictionary, letter P or Smith's History of the Cumberland Presbyterians) acknowledged the doctrine of predestination to be high mystery. We are therefore free to acknowledge that in our judgment it is easier to fix the limits which man should not transcend, on either hand, than to give an intelligent elucidation of the subject. We believe that both Calvinists and Arminians have egregiously erred on this point; the former by driving rational, accountable man into the asylum of fate; the latter by putting too much stress on man's works, and leaving too much out of view the grace that bringeth salvation, and thereby cherish those legal principles that are in every human heart. We think the intermediate plan on this subject in nearest the WHOLE truth. For surely, on the one hand, it must be acknowledged, the love of God, the merits of Christ, and the operation of the Holy Spirit, are the moving meritorious and active causes of man's salvation; that God is a sovereign, having a right to work when, where and how and on whom he pleases; that salvation is of the Lord; and that without the unmerited agency and operation of the Spirit of God, not one of Adam's race would or could ever come to the knowledge of the truth; for God is the author as well as the finisher of our faith. Therefore God as sovereign may, if he pleases, elect a nation, as the Jews, to preserve his worship free from idolatry; many nations for a time, as Christendom, in which to spread his gospel; individuals, as Cyrus and others, to answer a peculiar purpose; Paul and others for apostles; Luther and Calvin to promote the Reformation. But as it respects the salvation of the soul, God as sovereign can only elect or choose fallen man in Christ, who is the end of the law for righteousness to every one that believeth. But it appears to us incontestible from God's word, that God has reprobated none from eternity. That all mankind became legally reprobated by transgression is undeniable, and continue so until they embrace Christ. "Examine yourselves, etc., know ye not your own selves, how that Christ is in you, except ye be reprobates?" (2 Cor. xiii. 5). Now this cannot mean eternal reprobates or all who have not Christ in them would

be such; the absurdity of which will at once appear to every common capacity. Reprobation is not what some have supposed it to be, viz. a sovereign determination of God to create Millions of rational beings, and, for his own glory, damn them eternally in hell, without regard to moral rectitude or sin in the creature. This would tarnish the Divine glory, and render the greatest, best, and most lovely of all beings most odious in the view of all intelligences. When man sinned, he was legally reprobated, but not damned; God offered and does offer the law—condemned sinner mercy in the gospel; he having from the foundation of the world so far chosen mankind in Christ, as to justify that saying in 1 Tim. iv. 10, 'Who is the Saviour of all men, especially of them that believe.' This is a gracious act of God's sovereign electing love, as extensive as the legal condemnation, or reprobation, in which all mankind are by nature. But, in particular and saving sense, none can be properly called God's elect till they be justified and united to Christ, the end of the law for righteousness, (none are justified from eternity as appears evident from the following passages of God's word: "Who shall lay anything to the charge of God's elect? Who is he that condemneth? (Rom. viii. 33, 34)." Now it is certain the unbeliever is chargeable and condemned. Again, "If it were possible, they would deceive the very elect." (Matt. xxiv. 3-24). It is evident that a man must be enlightened in the knowledge of God and his Son Jesus, which is eternal life, before he can have spiritual wisdom to discern and detect the deceiver. If, then, by perverting the gracious provision of the gospel in refusing to submit to the righteousness of God, the sinner finally grieves the Spirit of God to depart from him, he becomes doubly and eternally reprobated or like the chemist's mineral, which will not coin into the pure metal, or the potter's clay, which marred upon the wheel. But if the creature fall into this deplorable situation, he was not bound by any revealed or secret decree of God to do so; it is his own fault. For God declares in his word that Christ died for the whole world; that he offers pardon to all; that the Spirit operates on all; confirming by an oath that he has no pleasure in the death of sinners. Every invitation of the gospel either promises or implies aid by the Divine Spirit. The plan of the Bible is grace and duty. God calls (grace); sinners hearken diligently (duty); God reproves (grace); sinners turn (duty); God pours out his Spirit (grace); sinners resist not the light, but improve it (duty); God makes known his Word (grace); or reveals his plan of salvation (grace); God invites (grace); Wicked man forsake your ways (duty); your thoughts (duty); and turn to the Lord (duty), and God will have mercy on you (grace), and God will abundantly pardon (grace).

SAME EXHIBIT. P. 90.

DECLARATORY STATEMENT TO CHAPTER XVII
said Confession.

"This doctrine, perseverance of the saints, although it is certainly supported by incontestable proof from the Word of God, as

well by the reason and nature of the union between Christ and his people, yet, like all other truths, has been and may be perverted. The idea of eternal justification and consequent perseverance is unscriptural; the way perseverance is insisted on by some preachers in connection with the preceding parts of their sermons is certainly dangerous. Example: First preach a superficial experience; then make a great many more allowances for weakness and wickedness, stumbling, straying, etc., than God's word admits, then press perseverance, and you have the formalist or hypocrite confirmed.

On the other hand, press the doctrines of final apostacy, if the creature does not do so and so, making the perseverance of the creature depend chiefly upon his doings; you raise in the mind of the unregenerate professor the fear of hell, as a high excitement to duty; confirm him in his legality; prepare his mind, indirectly, at least, to give glory to himself for his perseverance; settle him down in a self confident and deplorable situation. What God's word hath joined together, let not his ministers put asunder. But first let them give a clear definite description of the new birth, and then let them press the doctrine of heart and practical holiness as the sure consequence, ("For by their fruit ye shall know them,") and daily evidence (not the cause) of that gracious state which will insure their final perseverance.

Then this true and comfortable doctrine will not be perverted, neither will it have a tendency to licentiousness in him "whom the love of Christ sustaineth" or the real Christian; no, he serves and desires to serve God with more zeal, and from pure evangelical principles, still laying the foundation in his own mind, and cherishing the principle of ascribing all the glory to God for his conversion, his perseverance, and his final and complete redemption."

SAME EXHIBIT, p. 154.

DECLARATORY STATEMENT to CHAPTER XXIX
Section VI said Confession.

"The General Assembly also rejects the doctrine of consubstantiation."

SAME EXHIBIT, p. 157.

DECLARATORY STATEMENT TO CHAPTER XXX,
SECTION II, said Confession.

"By this article we do not understand that the officers of the Church have power to admit souls into the kingdom of glory, not that they can pardon sins; such assertions would be absurd and blasphemous.

In Scripture language, the kingdom of heaven sometimes signifies the kingdom of glory. It also signifies the gospel dispensation; and in the passage from whence the above is derived, it signifies the visible Church. All that is meant by the article is that the officers of the visible Church have the power to admit members into its communion, to expel the disorderly, and to restore

those who, in the judgment of charity, have repented of their sins. This power is exercised by the officers of every evangelical Church upon earth, and all refer to the passages quoted in the notes attached in this article, for their authority."

72. SECTION 62, ARTICLE IV. FORM OF GOVERNMENT PRESBYTERIAN CHURCH IN THE UNITED STATES: Beginning with line 7, page 224 of said record, with the words, 'For the orderly,' ending with line 26, page 224 thereof with the words, 'appropriate organ,' and reading as follows:

"Section 62-IV. For the orderly and efficient dispatch of ecclesiastical business, it is necessary that the sphere of action of each court should be distinctly defined. The session exercises jurisdiction over a single church, the Presbytery over what is common to the ministers, Sessions and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their Ministers, Sessions and churches; and the General Assembly over such matters as concern the whole church; and the jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity or progress of the church; and although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Hence, these courts are not separate and independent tribunals; but they have a mutual relation, and every act of jurisdiction is the act of the whole church, performed by it through the appropriate organ."

c. Plaintiffs offer from the abstract of the record of *Missouri Valley College et al. v. Guthrie et al.*, Circuit Court Saline County, Missouri, the following documents:

1. EXTRACT FROM THE ACTION OF MISSOURI SYNOD CUMBERLAND PRESBYTERIAN CHURCH, 1874, PAGES 227-231 INCLUSIVE, SHOWING ADOPTION OF ACTION OF McADOW SYNOD UPON QUESTION OF FOUNDING COLLEGE: Beginning with line 19, page 49 of said record, ending with line 25, page 54, thereof, with the words, 'P. G. Rea, Chairman,' and reading as follows:

"Your Committee on Education report the following: We deem it of the greatest importance to our church generally and especially to the Synods of McAdow, Missouri, Ozark, together with any other Synod or Synods that may desire to co-operate with us, that we have a first class college in the Missouri Valley.

We therefore submit the action of McAdow Synod upon this subject from Articles 7 to 19 inclusive, also Articles 22 and 23 and Articles 20, 21 and 24 as far as applicable to this Synod for your adoption, viz:

Articles 7 to 19.—The educational conflict of the day is between secular education, which regards man as simply a skilled producer, and a mere social animal, and Christian education in which the way of salvation is scripturally pointed out, and in which no instruction is given, which is opposed to the principles of the gospel. With the triumph of the latter, we may reasonably expect the church to prosper; with that of the former she must be circumscribed in her influence and usefulness.

2nd. We therefore infer the imperative necessity of a college of high grade for the success of our church in this valley.

3d. We as a Synod are unable to maintain such an institution, as the history of the past clearly teaches.

4th. That you propose to the other Synods of Missouri, and such adjacent Synods as may not be officially connected with other institutions, to unite in establishing and maintaining a first class college to be under the joint control and management of said Synods.

5th. That you appoint a commission of to confer and unite with similar commissions from said Synods in endowing and thus preparing the way to establish and put into successful operation such an institution as soon as may be found practicable. Therefore we recommend that if the other Synods concur, it shall be the duty of the commission as soon as they have digested and completed their plan of operation, through their chairman, to send a certified copy of said plan to the Moderators of the several Synods, whose duty it shall be to call a meeting of their respective Synods at the earliest date authorized by our form of government with the view of approving said plan of endorsement.

We recommend also (the other Synods concurring) that a majority of said commission shall be a quorum to transact business.

6th. That the joint committee (the other Synods concurring) become incorporated at the earliest possible time under such title and designation as 'The Educational Commission of the co-operating Synods of

7. In case of any vacancy in said commission from any cause whatever said vacancy shall be filled by said Synods respectively.

8th. That you direct (the other Synods concurring) that the joint commission hold its first meeting at a convenient time of day on the 27th day of October, 1874, at Sarcoxie, Mo., and thereafter they shall meet at such times and places as they may determine.

9th. The joint commission shall continue in office, unless otherwise ordered by the concurrence of a majority of said Synods until they shall have raised \$100,000 endowment, when the said Synods shall proceed to elect a Board of Trustees, and the commission shall then proceed to obtain a suitable charter, for the institution of learning contemplated above, and when said charter shall have been obtained all funds and other assets whatever in land or other property of any description whatever, which they

may have received for the said purpose together with all books and papers appertaining to their said offices and work, and immediately thereafter the said commission shall cease to exist for all purposes herein contemplated; provided, that when the conditions above mentioned are filled, should any one Synod fail, for any reason whatever, to elect its proportion of trustees, then the members of the joint commissions of such delinquent Synod, or so many and such of them as may be chosen by the joint commission, shall be recognized in the charter as members of said Board of Trustees and continue in office until such time as said delinquent Synods shall elect their successors; and it is further provided that the several co-operating Synods shall have the right to be represented in equal numbers in the said Board of Trustees.

10th. That you call the respectful attention of the joint commission to the plan approved by said Missouri and McAdow Synods in 1871; and should the said joint commission fail to adopt all or any part of said plan, then all such part or parts of said plan as may not be adopted by the said joint commission are hereby repealed.

11th. Same joint commission shall hold in trust for the said Synods all funds and other assets of all description whatever which may come into their hands for the above specified purpose, and shall be responsible to the said Synods for the proper care and management thereof; and to this end they shall have power to appoint all necessary agents, to elect proper officers for their body, one of whom shall be a treasurer, who shall be required to give a good and sufficient bond to secure all the funds that may come into his hands pertaining to this work, which funds he shall, if possible, loan so as to yield the highest rate of lawful interest, for which interest as well as principal the said treasurer shall account to the joint commission.

12th. Said joint commission, and their successors in office, including the trustees contemplated in the above, shall annually make a full report of all their transactions and of the condition of the treasury to the several Synods, respectively.

13th. That the report of A. W. Ridings, treasurer, be referred to us from McAdow Synod be filed among the papers of this Synod.

14. We recommend the said (your part of said commission) to attend the approaching meeting of Ozark Synod at Sarcoxie, Mo., and bear to that body this action of your body upon the subject of education, and at the option of said Synod to make any explanation thereof that may be desired.

15th. We recommend that this Synod provide to meet the traveling expenses of your commissioners in attending the said meeting of Ozark Synod.

16th. The said endowment of \$100,000 and whatever additional endowment that may in the future be obtained for said purposes, shall never be decreased by using any part to meet any current expenses or for any other purpose, but shall remain a per-

manent fund, the interest of which only is to be employed in payment of said salaries of teachers, etc. in the institution as may be directed by the trustees; provided, however (the other Synod concurring), the joint commission shall have power to use so much of the funds collected by them as may be necessary to the successful prosecution of their said work.

17th. We recommend (the other Synods concurring) that the institution contemplated above shall be the continued history of Chapel Hill and McGee Colleges, in which their records, seals, etc., shall be kept as a part of the property of said institution.

18th. We recommend that it be hereby expressed as the will of this Synod that said joint commission, in drafting their plan, shall take this paper into consideration as only of equal authority with papers furnished by other Synods.

Respectfully submitted,

P. G. Rea, Chairman.

2. AN EXTRACT FROM THE MINUTES OF MISSOURI SYNOD, 1874, PAGE 237-245, ENTITLED, 'PLAN OF ENDOWMENT BY EDUCATIONAL COMMISSION': Beginning with line 8, page 56, of said record, with the words, '1. That a permanent fund,' ending with line 29, bottom page 66 thereof, and reading as follows:

1. That a permanent fund of not less than one hundred thousand dollars, for the permanent endowment of an institution of learning, to be under the joint ownership and control of the McAdow, Missouri, and Ozark Synods of the Cumberland Presbyterian Church, or said Synods, and any other of said church, that they be formed in the present bounds of said Synods, with any other Synods of said church which may become connected with the above Synods in said work, be raised by contributions in the manner hereinafter provided.

2. That the interest only of said permanent fund, and all additional contributions thereto, shall be used in payment of the salaries of the professors of said institution of learning; but if any part thereof may not, in the judgment of the Board of Trustees, be necessary for that purpose, then such excess of interest may be otherwise for the support of said institution as may be directed by said trustees.

3. That all contributions to said fund shall be made in money, or as hereinafter named and provided, and the money as paid to the treasurer shall be loaned by him at the highest rate of interest authorized by law, as directed by educational commission, or their legal successors in office, including Board of Trustees of said contemplated institution; and if said interest be not paid annually it shall be added to the principal and bear the same rate of interest, and no part of said interest shall be used until cash proceeds of such contributions and such interest shall amount to not less than one hundred thousand dollars, and thereafter the interest only may be used as above provided, and no part of the

principal of any additional contribution to such permanent fund shall ever be used, but the same shall forever remain a part of said permanent fund; provided, however, that the educational commission shall have power to use so much of the funds collected by them, from time to time, as may be necessary to the successful prosecution of their work.

4. That in raising said fund of one hundred thousand dollars, notes may be taken, payable when the educational commission or their successors in office shall announce that seventy-five thousand dollars thereof have been obtained in notes and cash; provided, however, that the vendors of these notes shall have the privilege of paying these notes in two equal installments—one when the above announcement is made and the other one year thereafter—with interest in all cases from date as above contemplated; provided also that the payment of the notes for the remaining twenty-five thousand dollars may be made in two installments of six and twelve months from the date of the announcement above mentioned, with interest as above stated; provided also that a style of notes shall be authorized for persons to give their obligations for amount to be paid in installments at specified times, governed proportionally to the cash amounts of the one hundred thousand dollars paid into the treasury; provided, however, that said institution shall not be opened until the whole of the one hundred thousand dollars shall have been paid in.

5. That gifts, grants, conveyances, bequests and devises of bonds, property and land, or either as contributions to said fund may be made to the educational commission or their successors in office, hereinafter named and provided for, in trust for such fund, and the cash proceeds thereof shall forever be a part of such fund.

6. That if from any causes said fund shall be reduced below said sum of one hundred thousand dollars, then the interest thereon shall not be so used as provided, but the same shall be added to the fund thereby and by contribution or otherwise the said fund shall again be raised to the sum of one hundred thousand dollars, so that the minimum of said fund shall be and remain not less than one hundred thousand dollars.

7. That the educational commission shall hold in trust for the said Synods all funds and other assets of all descriptions whatever which may come into their hands for the above specified purpose, and shall be responsible to the said Synods for the proper care and management thereof; and to this end they shall have power to appoint all necessary agents, to elect proper officers for their body, one of whom shall be a treasurer, who shall be required to give a good and sufficient bond to secure all the funds that may come into his hands pertaining to this work, which funds he shall loan, if possible, so as to yield the highest rate of lawful interest, for which interest as well as the principal, the said treasurer shall account to the educational commission.

8. That the treasurer of the educational commission as heretofore provided for, shall be required to give bond, with securities approved by the commission through their executive committee or their successors, and conditioned that he will faithfully manage control and account for, pay over and deliver all contributions to said fund received by him, and all interest thereon, and all effects pertaining to his office according to the orders of said educational commission, or their successors in office, duly appointed and when required thereto by said commission or their successors, he shall give a new bond or additional securities from time to time.

9. That the said treasurer invested with the powers, duties and responsibilities herein named, shall continue in office upon the faithful performance of his trust until his successor is duly appointed and qualified, or until he shall be required to account for, pay over and deliver all funds and effects and papers pertaining to his said office according to orders of said educational commission or their successors in office, duly appointed; and in case of his refusal to act, his death, or his failure to give bond with approved security, or new bond or bonds, or additional securities when required, the said educational commission (or their executive committee—in their vacation, subject to the approval of the commission) shall appoint a treasurer who shall give like bonds and be subject to all the duties, liabilities and responsibilities herein required.

10. That the treasurer shall quarterly make a full report of the condition of the treasury, including amount of funds on hand at last report, with all additional receipts during the quarter, and the source thereof, and all disbursements, and for what purposes, and of all his other official acts, to the president of the educational commission; and he should also make a full and complete report of all the transactions of his office to the educational commission at their annual meetings.

11. That any person who will give ten thousand dollars to said permanent fund shall have the privilege of naming a professorship in said institution, and such persons shall have the privilege of paying said sum of ten thousand in money in one payment or in annual installments, with interest annually, running not exceeding five years from date; and when such person or persons shall pay said sum of ten thousand dollars in money in one payment, then the educational commission or their successors in office, shall give to such person or persons a certificate of such payment and privilege, and when such person or persons shall choose to pay such sum of ten thousand dollars in annual installments, running not exceeding five years, with interest as aforesaid, then in the event that such person or persons shall fail or neglect to pay the whole of said sum within said term of five years, with interest, then the said privileges shall be forfeited and the amount paid shall be a part of said permanent fund.

12. That as soon as the educational commission shall have raised the said one hundred thousand dollars they shall give the several co-operating Synods official notice thereof, which Synods shall, as provided for in their late action, elect a Board of Trustees for said contemplated institution of learning consisting of members as the first trustees of said institution; that is members by each Synod, who shall hold their office subject to the pleasure and orders of the said Synods respectively, and until their successors are duly elected or appointed; and the educational commission, as soon as they shall have given notice to said Synods as above provided, shall proceed to locate said institution by appointing a time and place for holding a meeting in reference thereto, when and where they shall receive all bids and offers made to secure the location of said institution; and having given ninety day's notice of the time and place of their said meeting, and to whom and how said bids may be made and transmitted, by publishing the same in the church papers, and also in such other papers as they may deem necessary; they shall meet at such time and place, and receive, open, examine and compare all bids and offers made, and proceed to examine the different locations making such bids and offers, by actual observation; and not less than a majority of the members of the commission being present shall take into consideration the moral character of the respective places, and the financial advantages of the respective places, embracing the amount of money and property bid and offered, and probable current expenses of the institution, including cost to students, and also the healthfulness and accessibility of the respective places, and the probable patronage to be secured at these points respectively; and when the said commission shall have determined upon the location; and shall have received the money bid, and an absolute conveyance in fee simple, free from all encumbrances, of all property and real estate offered, then said commission shall locate said institution and name the same, and shall issue a certificate of such location, and shall forthwith proceed to secure a suitable charter for said institution of learning.

13. That at the time when the said Synods shall appoint the said Board of Trustees, they shall appoint the time and place for the first meeting of the said Board of Trustees; and at such time and place said Board of Trustees shall meet and organize and appoint or elect the necessary officers, one of whom shall be treasurer of the board, and said board shall require said treasurer to give bond with securities, to be approved by them, in such sum as they may determine; and said board shall have the control and management of the ground, buildings, moneys, funds and effects of all kinds of said institution, and the appointment and removal of the professors, teachers, officers and other employes of said institution, and the general management and control of said institution, and its finances and operations; and when their treasurer shall have been appointed and duly qualified and his bond and

securities approved, said Board of Trustees shall order the educational commission before named to account for, pay over and deliver to their said treasury all contributions to said fund, and all interest thereon, and all effects, books and papers pertaining to their said office and work, whereupon said educational commission shall cease to exist for the purposes for which they were appointed; and said Board of Trustees shall control and manage said funds as herein provided and shall make a full report of all their proceedings and actions and of all things pertaining to said institution and its management and control and finances to each meeting of said Synods respectively.

14. That the said contemplated institution be the continued history of Chapel Hill and McGee Colleges, in which their records, seals, etc., shall be kept as a part of the history of said institution; provided, however, that the fund reported to the several Synods this fall by A. W. Riddings, Esq., of Warrensburg, Mo., as the result of funds realized from the assets of Chapel Hill College, shall, if placed in charge of this commission, be kept at interest, and may be increased by special donations as provided in Section 11 of this plan till it amount to fifteen thousand dollars, and this fund of fifteen thousand dollars shall be used to sustain a chair under the name of the Chapel Hill Professorship; provided, also, that the Missouri Synod aforesaid shall have the privilege of deciding with what chair of instruction in the academic department of said institution the said professorship shall be associated, provided that said fifteen thousand dollars shall be a part of the one hundred thousand dollars permanent fund.

15. That any person or persons who shall in one payment or in five annual installments, with interest thereon as aforesaid, make a contribution of ten thousand dollars to the Laboratory, Museum, Cabinet, Library or Contingent Fund of said institution, shall have the privilege of naming said fund, and said fund shall be registered under said name and the proceeds thereof kept separate and applied to the special purpose for which it was contributed, and the educational commission, or their successors, shall issue a certificate of said payment and privilege to the parties making such contribution, provided that the same fund shall be permanent, the interest alone being used for the above purposes.

16. That if any person or persons shall contribute as a permanent fund a sum the interest of which shall be sufficient to meet the tuition and other necessary expenses, or the greater part of such expenses, of an indigent student, such contribution shall be created into a scholarship under the conditions agreed to by such donor or donors and the educational commission or their successors, and such shall be known by the name designated by such donor or donors of which donation and privilege they shall have a certificate.

17. That if any person, or persons shall contribute a permanent fund the interest of which shall be sufficient to meet the necessary expenses of a post-graduate student, such fund shall

be created into a Fellowship, under such name as the donor or donors may designate, and the interest applied as above indicated. under such conditions as said donor or donors and the educational commission, or their successors, may prescribe, of which a certificate shall be given as in the above cases.

18. That the educational commission shall have the right to make all necessary improvements of this plan and add such new features thereto as their experience and judgment, and the demands of the enterprise may suggest, provided that such changes shall in no case conflict with the foregoing provisions or work any damage to the contributors to the funds herein named.

This is to certify that the above is a true copy of the plan of endowment adopted at Sarcoxie, Mo., October 27 and 28, 1874, by the joint commission of the McAdow, Missouri, and Ozark Synods for the purpose therein specified

J. B. Mitchell,

President of the Educational Commission and etc., College Mound, Mo., Nov. 4, 1874."

3. RESOLUTION, ASSERTING AUTHORITY OF SYNODS OVER THE EDUCATIONAL COMMISSION.—

Extract of Minutes Missouri Synod, 1874, found on page 245 thereof:—Beginning at line 13, page 66, of said record, ending with line 29, page 66 thereof at the bottom of page 66, and reading as follows:

"The following preamble and resolutions were offered and on motion were adopted:

Whereas, There has arisen a question in this Synod as to whether the educational commission in making changes in their plan of endowment as contemplated in the eighteenth article can act without the approval of the Synods; therefore

Resolved, That this article be adopted with the understanding that the Synods have authority over the future and all other actions of said commission.

The minutes were read and approved.

On motion the Synod adjourned.

G. V. Ridley, Moderator.

Frank Russell, Clerk.

S. H. McElvain, Assistant Clerk.

Attest:

P. G. Rea, S. C. of M. S."

4. REPORT OF THE COMMITTEE ON EDUCATION, Minutes of the Ozark Synod Cumberland Presbyterian Church, 1874:—Beginning with line 19, page 67 of said record, with the words, 'The Committee,' ending with line 24, page 73 thereof, with the words, 'Elder M. H. Rithey,' and reading as follows:

'The committee on education submitted their report as follows:

Your committee on education would report the following: There is manifestly a constantly increasing demand throughout the whole country for a higher Christian education. The truth is becoming apparent that such an education is paramount to all other human instrumentalities employed in real scientific development and in the defense and propogation of our holy religion as well as in preparing the minds and hearts of the coming generation for the reception and rational appreciation of the truth as it is in Jesus.

The church today, more than ever before, should feel a deeper interest in this vital subject. You live in a period when intellectual thirst is driving the masses to fountains where supplies may be had and if the church fail to make provisions the intellectual cravings of the masses will seek elsewhere, and in this way much material will be placed beyond her reach and influence.

Secular education does not meet the demand of the age in which we live.

It fails to make science do homage to the Cross. It does not sufficiently blend with intellectual culture the moral and spiritual improvement of the heart.

Too many institutions of learning neglect entirely the youth committed to their care, and in this most favorable period for making deep impressions is lost.

In view of this pressing demand, your committee deem of great importance to the church generally and especially to the Synods of McAdow, Mo., and Ozark, together with any other Synods that may desire to co-operate with them to establish a first-class college in Mississippi Valley.

Your committee therefore submit the action of the McAdow, Missouri, Synods upon this subject as far as applicable to this Synod for your adoption, viz: The educational conflict of the day is between secular education which regards man as simply a skilled producer and a mere social animal; and Christian education in which the way of salvation is scripturally pointed out, and in which no instruction is given, which is opposed to the principles of the Gospel.

With the triumph of the latter we may reasonably expect the church to prosper; with that of the former she must be circumscribed in her influence and usefulness.

2. We therefore are under the imperative necessity of a college of high grade for the success of our church in the Missouri Valley.

3. That you co-operate with other Synods in Missouri and such adjacent Synods as may not be officially connected with other institutions of learning in establishing and maintaining a first-class college to be under the joint control and management of said Synods.

4. That you appoint a commission of three members of your body to confer and unite with similar commissioners, appointed

by the other Synods, in endowing and thus preparing the way to establish and bring into successful operation such an institution as soon as may be found practicable.

And we recommend that it shall be the duty of the commission, as soon as they have digested and completed their plan of operation, to send, through their chairman, a certified copy of said plan to the Moderators of the several Synods, whose duty it shall be to call a meeting of their respective Synods at the earliest date authorized by our form of government with the view of approving said plan of endowment. We recommend also that a majority of said joint commission shall be a *quorum* to transact business.

5. That the joint commission (the other Synods concurring) become incorporated at the earliest period under some such title and designation as 'the Educational Commission of the co-operating Synods of McAdow, Missouri and Ozark.

6. In case of any vacancy in said commission from any cause whatever, said vacancy shall be filled by said Synods respectively.

That you direct your commission to meet with the commission of the other two Synods, and that the joint commission hold its first meeting at some convenient hour, October 27th, 1874, at Sarcoxie, Mo., and thereafter they shall meet at such times and places as they may select.

8. The joint commission shall continue in office unless otherwise ordered by a concurrence of a majority of said Synods until they shall have raised \$1,000.00 endowment, when the said Synods shall proceed to elect a Board of Trustees, and the commission shall then proceed to obtain a suitable charter for the institution of learning contemplated above.

And when said charter shall have been obtained the said joint commission shall turn over to the said Trustees all funds and other assets, whether in lands or other property of any kind whatever, which they may have secured for the said purpose, together with all books and papers appertaining to their office and work. Immediately thereafter the said commission shall cease to exist for all the purposes herein contemplated; provided, that when the conditions above contemplated are filled, should any one Synod fail for any reason to elect its proportion of Trustees, then the members of the joint commission of such delinquent Synod, as many and such of them as may be chosen by the joint commission shall be recognized in the charter as members of said Board of Trustees and continue in office until such time as such delinquent Synod shall elect their successors. And it is further provided that the several co-operating Synods shall have the right to be represented in equal numbers in the said Board of Trustees.

9. That said joint commission shall hold in trust for the said Synods all funds and other assets of all descriptions whatever which may come into their hands for the above specified purposes and shall be responsible to the said Synods for the proper care and management thereof; and to this end they shall have power to appoint all necessary agents, to elect proper officers for their body, one of whom shall be treasurer, who shall be required to give good

and sufficient bond to secure all the funds that may come into his hands pertaining to the work, which fund he shall if possible loan so as to yield the highest rate of lawful interest; for which interest as well as principal the said treasurer shall account to the joint commission.

10. That said joint commission and their successors in office, including the Trustee contemplated in the above, shall annually make a full report of all their transactions, and of the condition of the treasury, to the several Synods respectively.

11. That the report of A. W. Riddings, treasurer, etc., referred to your committee be filed among the papers of the Synod.

12. That the said endowment of \$100,000.00 and whatever additional endowment that may in future be obtained for said purposes shall never be decreased by using any part thereof to meet any current expenses for any other purpose, but shall remain a permanent fund, the interest of which only is to be employed in payment of salaries of teachers, etc., in the institution, as may be directed by the Trustees; provided, however (the other Synods concurring), the joint commission shall have power to use so much of the funds collected by them as may be necessary to the successful prosecution of their work.

13. We recommend (the other Synods concurring) that the institution contemplated above shall be a continued history of Chapel Hill and McGee Colleges, in which their records, seals, etc., etc., shall be kept as part of the property of said Institution.

14. We recommend that it be hereby expressed as the will of this Synod that said joint commission in drafting their plan shall take this paper into consideration as of only equal authority with papers furnished by the other Synods.

15. We recommend that the paper addressed to your body by the Trustees of Lincoln University setting forth the history and prospects of said Institution be referred to your commission and that they be required to prepare to the same and that a copy be sent to the Trustees of the said Institution.

It was moved that the report be considered item by item.

The preamble, the first and second items were adopted. Pending the discussion of the third item Synod took recess until 7 o'clock p. m.

Seven o'clock p. m., Synod resumed the consideration of the third item of the report, which was adopted.

On motion the regular order of business was dispensed with and Rev. T. S. Love, of Missouri Synod, was invited to a seat as a member in council.

Items from 4th to 15th inclusive, were severally adopted. On motion the report was unanimously adopted and the Synod arose and sung the 'Doxology'—'Praise God from Whom All Blessings Flow.'

On motion Synod proceeded to the selection of the three commissioners provided for in the report of the Committee on Education, which resulted in the choice of Revs. T. W. Pandergrass and E. E. Baker and Elder M. H. Richey."

5. PLAN OF ENDOWMENT AND CHARTER ISSUED TO THE EDUCATIONAL COMMISSION OF THE McADOW, MISSOURI, OZARK AND MISSOURI VALLEY SYNODS OF THE CUMBERLAND PRESBYTERIAN CHURCH, issued September 21, 1881: Beginning at line 15, page 74, of said record, with the words, 'State of Missouri,' ending with line 11, page 96, thereof, with the words, 'Se'y of State,' and reading as follows:

"State of Missouri, Department of State.

To All to Whom These Presents Shall Come:

I, Cornelius Roach, Secretary of State of the State of Missouri, and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of Charter issued to the Educational Commission of the McAdow, Missouri, Ozark, and Missouri Valley Synods of the Cumberland Presbyterian Church, issued September 21, 1881, as the same appear on file * * * in this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Missouri.

Done at the City of Jefferson, this 17th day of June, A. D. Nineteen Hundred and Ten.

(Signed)

CORNELIUS ROACH.

Secretary of State.

(Signed)

Fred G. Park,

(Seal)

Chief Clerk.

ARTICLE I. Name.—The name and style of this joint commission shall be 'The Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church.'

ARTICLE II. Purpose.—The duties, responsibilities, privileges and objects of this commission shall be such and only such as those imposed, required, conferred and described in the papers of the several Synods above named, adopted during their several meetings in October, 1874.

ARTICLE III. Officers, Section 1. The officers of this Commission shall be a President, Vice-President, Secretary and Treasurer, the first three of whom shall be the Executive Committee of the commission. These several officers shall hold their respective offices during efficiency or at the discretion of the commission.

Section 2. Clause 1st. It shall be the duty of the President to preside at all meetings of the commission, and in this position he shall have all the prerogatives, and discharge all the duties usually pertaining to a presiding officer.

Clause 2nd. He shall receive all the monthly reports of agents, and the quarterly reports of the Treasurer, and shall combine said reports and submit them, quarterly to the Executive Committee, and with said committee shall, quarterly review all work of agents or other officers and employees of the commission, and with said committee shall give directions for future operations to all such agents, officers and employees.

Clause 3d. He shall be employered to call, at discretion, special meetings of the Executive Committee, and, with the advice of said committee, or at the request of any four members of said commission, he shall call a special meeting of the commission.

Clause 4th. The President shall, at all times, be charged with the general oversight of all officers, agents, employees, property and business of the commission, and shall, at all times, advise with, give instructions to, and direct the operation of such officers, agents and employees; and shall quarterly, or oftener, if so required by the commission, or he may deem it necessary, submit such instructions, directions and acts to the Executive Committee for their approval.

Clause 5th. It shall be the further duty of the President to make to the commission, at their annual meeting, a full and complete report of all his transactions, together with the general condition of the work, and the prospect thereof, as shown by the report of the officers and agents of the commission, and shall be required to present to the commission in said report such mode of the work as would, in his judgment, render the prosecution of the work more efficient.

Clause 6th. It shall be the duty of the President to collect all notes and parts of notes, with the interest thereon, upon their maturity, and pay the same over to the Treasurer, taking his receipt therefor, and he is hereby declared to be, *ex officio* a soliciting agent, and shall, as such, submit his report to the Executive Committee.

Clause 7th. The President shall make a report of all collections to the Executive Committee quarterly, and also a full statement of all such collections to the commission in his annual report, or oftener to either if required by them.

Clause 8th. It shall be the duty of the President before commencing to make collections, as above provided to give bond to the commission, in such amount and with such security as they may require.

Section 3. Clause 1st. It shall be the duty of the Vice-President to preside at all meetings of the Executive Committee or of the commission in the absence of the President, and to perform all other duties of the President in case of his temporary disability or his death, resignation or removal from office until another President shall have been duly elected by the commission.

Clause 2. In case of the death or resignation of the President, it shall be the duty of the Vice-President, without delay, to call a meeting of the commission for the election of a President, and for the transaction of any other business pertaining to the interests involved.

Clause 3rd. It shall be the duty of the Vice-President to attend all meetings of the Executive Committee, as a member thereof.

Section 4. Clause 1st. It shall be the duty of the Secretary to keep a full, fair and legible record of all the proceedings of the

annual and special meetings of the commission, in a suitable book, in which record shall be transcribed *in extenso*, all reports of officers and agents and other papers connected with said reports, and shall also preserve on file, all such reports and papers.

Clause 2d. He shall, under the direction of the President, assist said officer in carrying out all the plans and acts of the commission.

Clause 3d. The Secretary shall attend all meetings of the Executive Committee, as a member thereof.

Section 5. Clause 1st. It shall be the duty of the Treasurer to perform all the duties prescribed for said officer, in the plan of endowment, adopted by the commission, and to keep in his office a full record of all the business of his office, subject to the inspection of the Executive Committee and commission.

Clause 2d. He shall make a quarterly report to the President and an annual report to the commission, as prescribed in Section 10 of the plan of endowment.

Clause 3d. He shall receipt in duplicate to the agents or other persons for all moneys received by him.

Clause 4th. He shall not pay out any money except by order of the commission, or of the Executive Committee during vacation of the commission.

ARTICLE IV. Committee.—Section 1. The standing committee of the commission shall be the Executive Committee, as constituted above, and the Auditing Committee.

Section 2. Clause 1st. It shall be the duty of the Executive Committee to meet quarterly, or at the call of the President, and at such meeting to review the administration of the President, examine the reports of the Treasurer and agents, and take all suitable measures for the successful prosecution of the work, and fill any vacancy that may occur in the office of the Vice-President, Secretary or Treasurer, and in the agencies, subject to the approval of the commission, and to appoint additional agents, at discretion, as well as to have a general oversight of all the business of the commission during the vacation thereof.

Clause 2d. The Executive Committee shall keep a full and fair record of all their proceedings and acts, and report the same to the commission at their annual meetings, or oftener if so required by the commission or the committee deem it necessary.

Clause 3d. The Executive Committee shall have power during the vacation of the commission to fix the salaries of agents employed by them, subject to the approval of the commission, and they shall draw upon the Treasurer for money to pay said agents, or for any other necessary expenditures, during said vacation.

Clause 4th. Said Committee shall hold their first meeting at such time and place as the President may direct.

Section 3. It shall be the duty of the Auditing Committee to meet at the place of the annual meeting of the commission on Friday previous to the time for such meeting, and shall, then and there, proceed to examine the reports of the President and Treas-

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urer, and also the accounts of officers, agents and employees, and upon the meeting of the commission shall report the condition of the books of the President, Secretary and Treasurer, and all such officers and agents shall transmit all such books, papers and accounts to said committee at said time and place

ARTICLE V. Agent.—Section 1. Clause 1st. It shall be the duty of the several soliciting and collecting agents to operate in such portions of the country and otherwise to conform to such instructions as may be given by the commission of their Executive Committee.

Clause 2d. These several agents (except the President, who shall report to the Executive Committee, as before provided) shall make a full monthly report to the President to the commission of all their work, including all moneys received, and from whom; the amount of notes taken, and from whom, and of what character, and shall transmit any difficulties in their work, and also make a full statement of all items of expense incurred in their work during said month.

Clause 3d. The several agents shall also report and transmit all moneys collected by them severally to the Treasurer, at the close of each month, and shall retain the receipt of the Treasurer as their voucher for the same, and shall transmit the duplicate thereof, with report to the President; provided also, that the President shall give all agents a receipt for all notes transmitted by them to him.

ARTICLE VI. Meetings.—Section 1. The annual meetings of the commission shall be held in September of each year according to the time and place of its own adjournment.

Section 2. Special meetings may be held as elsewhere provided in the Constitution and at such times and places as the President may designate in his call for such special meetings.

ARTICLE VII. Rules of Order.—Section 1. The manual of the Cumberland Presbyterian Church shall be observed in all the meetings of the commission.

ARTICLE VIII. Business Office.—Section 1. The Educational Commission shall have a business office in the City of Warrensburg, Johnson County, Missouri.

ARTICLE IX. Amendments.—Section 1. This Constitution may be altered, amended or otherwise changed at any regular meeting of the commission by a two-thirds vote of all the members present.

We, the undersigned, the Joint Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church, do hereby adopt the foregoing Constitution.

J. H. Houx, President.
G. L. Moad, Vice-President.
Benj. Eli Guthrie, Secretary.
T. S. Love.
E. D. Pearson.
E. P. Pharr.
W. S. Garrett.
J. C. Shepherd.
J. T. Johnson.
W. O. H. Perry.
J. B. Green.
W. A. Singleton.

With Harvey W. Salmon, as Treasurer.

PLAN OF ENDOWMENT.

1. That a permanent fund of not less than one hundred thousand dollars, for the permanent endowment of an institution of learning, to be under the joint ownership and control of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church, of said Synods and any other that may be formed in the present bounds of said Synods, with any other synods of the said church which may become connected with the above Synods in said work, be raised by contribution in the manner hereinafter provided.

2. That the interest of said permanent fund and of all additional contributions thereto shall be used in payment of the salaries of the professors of said institution of learning; but if any part thereof may, in the judgment of the Trustees, not be necessary for that purpose, then such excess of interest may be otherwise used for the support of said institution as may be directed by said Trustee.

3. That contributions to said fund shall be made in money, or as hereinafter named and provided, and the money, as paid to the Treasurer, shall be loaned by him, on good security, at the highest available rate of interest authorized by law, as directed by the Educational Commission or their legal successors in office including the Board of Trustees of said contemplated institution; and if said interest be not paid annually it shall be added to the principal, and bear the same rate of interest, and no part of such interest, shall be used until the cash proceeds of such contributions and such interest shall amount to not less than one hundred thousand dollars; and thereafter the interest only may be used as above provided, and no part of the principal of any additional contributions to such permanent funds shall ever be used, but the same shall forever remain a part of said permanent fund; provided, however, that the Educational Commission shall have the power to use

so much of the funds collected by them, from time to time, as may be necessary to the successful prosecution of their work.

4. That in raising the one hundred thousand dollars the commission looks to the pastor and officers of each congregation to present this interest to their people, and to take from them the best contributions possible, and forward the same, through their treasurer to the President of the Educational Commission, taking his receipt for the amount, whose duty it shall be monthly to pay over all moneys coming into his hands to the Treasurer of the Commission. In all cases where persons prefer to give their notes, the notes shall be made payable to the President, on such conditions as shall be specified on their face, and such institution shall not be opened until the whole sum of one hundred thousand dollars, shall have been paid in, or made amply secure by mortgages, or deeds of trust on unencumbered property.

5. That gifts, grants, conveyances, bequests and devises of bonds, property and lands, or either, as contributed to said fund, may be made to the educational commission, or their successors in office, hereinafter named and provided for, in trust for said institution, and the cash proceeds thereof shall forever be a part of said funds.

6. That if for any cause the said fund shall be reduced below the said sum of one hundred thousand dollars, then the interest thereon shall not be so used as above provided, but that same shall be added to the fund until thereby and by contributions or otherwise the said fund shall again be raised to the said sum of one hundred thousand dollars, so that the minimum of said fund shall be in the main not less than one hundred thousand dollars.

7. That the Educational Commission shall hold in trust for the said Synods said funds and all other assets, of all description whatever, which may come into their hands, for the above specified purpose, and shall be responsible to the said Synod for the proper care and management thereof; and to this end they shall have power to appoint all necessary agents, to elect proper officers for their body, one of whom shall be Treasurer, who shall be required to give good and sufficient bond, to secure all the funds that may come into his hands pertaining to this work, which fund shall be loaned if possible, so as to yield the highest lawful rate of interest, for which interest as well as principal the said Treasurer shall account to the Educational Commission.

8. That the Treasurer of the Educational Commission as heretofore provided for, shall be required to give bond, the securities, to be approved by the Educational Commission, through their Executive Committee or their successors, and conditioned that he will well and faithfully perform all his duties as such Treasurer and faithfully manage, control and account for, pay over and deliver all contributions, to said fund received by him, with all interest thereon, and effects pertaining to his office, according to the order of said Educational Commission, or their successors in office, duly appointed, and when required thereto by said Commission or

their successors, he shall give a new bond or additional security from time to time.

9. The said Treasurer, invested with the powers, duties and responsibilities herein named, shall continue in office, upon the faithful performance of his trust, until his successor is duly appointed, and qualified, or until he shall be required to account for, pay over and deliver all funds, effects and papers pertaining to his said office, according to the order of said Educational Commission, or their successors in office, duly appointed, and in case of his refusal to act, his death, or his failure to give bond, with approved securities, or new bond or bonds, or additional security, when so required, the said Educational Commission, or their Executive Committee in their vacation, subject to the approval of the commission, shall appoint a Treasurer, who shall give like bond and be subject to all duties, liabilities and responsibilities herein required.

10. That the Treasurer shall, once in every three months, make a full report of conditions of the Treasury, including the amount of funds on hand at last report, with all additional receipts during the quarter, and the sources thereof, and also all disbursements, and for what purpose, and of all his other official acts, to the President of the Educational Commission; and he shall also make a full and complete report of all the receipts and transactions of his office to the Educational Commission at their annual meetings.

11. That any person who will give ten thousand dollars, to said permanent fund shall have the privilege of naming a professorship in said institution; and such person or persons shall have the privilege of paying said sum of ten thousand dollars in money, in one payment, or in annual installments, with interest annually, running not exceeding five years from date and when said person or persons shall pay said sum of ten thousand dollars in money, in one payment, then the educational commission or their successors in office, shall give to said person or persons a certificate of payment and privilege; and when such person or persons shall choose to pay such sum of ten thousand dollars, in annual installments, running not exceeding five years, with interest as aforesaid, then in the event that such person or persons shall fail or neglect to pay the whole of said sum within the said term of five years, with interest, the said privilege shall be forfeited and the amount paid shall be a part of said permanent fund.

12. That as soon as the Educational Commission shall have raised the said one hundred thousand dollars, they shall give the several co-operating Synods official notice thereof, which Synods shall, as provided in their late actions, elect a Board of Trustees for said contemplated institution of learning, consisting of members, as the first Trustees, of said institution; that is, members by each Synod, who shall hold their offices subject to the pleasure and orders of said Synods respectively and until their successors are duly appointed and elected; and the Educational

Commission, as soon as they shall have given notice to said Synods, as above provided shall proceed to locate said institution by appointing a time and place for holding a meeting in reference thereto, when and where they shall receive all bids and offers made to secure the location of said institution; and having given ninety days notice of the time and place of this meeting, and to whom and how said bids and offers may be made and transmitted, by publishing the same in the Church papers, and also such other papers as they may deem necessary, they shall meet at such time and place and receive, open, examine and compare all bids and offers made, and proceed to examine the different locations, making such bids and offers by actual observation and, not less than a majority of the commission being present, shall take into consideration the moral character of the respective places, the moral power and influences of the Cumberland Presbyterian Church at the respective places, and the financial advantages of the respective places, embracing the amount of money and property, bid and offered, and the probable current expenses of the institution, including cost to students; and also the healthfulness and accessibility of the respective places, and the probable patronage to be secured at the competing points, respectively; and when the said commission shall have determined upon the location and shall have received the money bid, and an absolute conveyance, in fee simple, free from all encumbrances, of all property and real estate offered, then said commission shall locate said institution and name the same, and shall issue a certificate of such location, and shall, forthwith, proceed to procure a suitable charter for said institution of learning.

13. That at the same time when the said Synods, appoint the said Board of Trustees, they shall appoint the time and place of the first meeting of said Board of Trustees, and at such time and place, the said Board of Trustees shall meet and organize and appoint or elect the necessary officers, one of whom shall be Treasurer of the Board, and said Board shall require the said Treasurer to give bond, with securities, to be approved by them, in such sum as they may determine, and said Board shall have the control and management of the grounds, buildings, money, funds and effects of all kinds of said institution, and the appointment and the removal of the professors, teachers, officers and other employees of said institution and its finances and other operations; and when their Treasurer shall have been appointed and duly qualified and his bond and securities approved, said Board of Trustees shall order and require the Educational Commission before named to account for, pay over and deliver to their said Treasurer all contributions to said fund and all interest thereon, and all effects, books and papers pertaining to their said office and work.

Whereupon said Educational Commission shall cease to exist, for all the purposes for which they were appointed, and said Board of Trustees shall control and manage said fund, as herein provided, and shall make a full report of all their proceedings and actions and

of all things pertaining to said institution, and its management, control and finances, to each meeting of said Synods, respectively.

14. That the Educational Commission shall have the right to make all necessary improvements of this plan, and add such new features thereto as their experience and judgment and the demands of the enterprise may suggest; provided, that all changes in this plan shall be referred to the co-operating Synods for their approval, and shall become a part of the plan only when ratified by all those Synods.

We, the undersigned, the Joint Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church, do hereby adopt the foregoing plan of endowment.

J. H. Houx, President.
G. L. Moad, Vice-President.
Ben Eli Guthrie, Secretary.
E. D. Pearson.
W. J. Garrett.
J. T. Johnson.
J. B. Green.
T. S. Love.
E. P. Pharr.
J. C. Shepherd.
W. O. H. Perry.
Wm. H. Singleton.
With Harvey L. Salmon, Treasurer.

In the Circuit Court of Johnson County, Missouri. October Term, 1880. James H. Houx, Benjamin Eli Guthrie, and Granville L. Moad, Petitioners, ex parte.

Come now the said James H. Houx, Benjamin Eli Guthrie, and Granville L. Moad, by their attorneys, and state to the court that heretofore, to-wit, in the month of October, A. D. 1874, J. H. Houx, G. L. Moad, T. S. Love, E. D. Pearson, E. P. Pharr, Ben Eli Guthrie, W. J. Garrett, J. C. Shepherd, T. J. Johnson, W. O. H. Perry, J. B. Green and William A. Singleton were by the McAdow, Missouri, Ozark and Missouri Valley Synods, of the Cumberland Presbyterian Church, duly appointed as a Joint Educational Commission for said Synods, for the purpose and with the power and authority to provide and adopt a plan of endowment and constitution, for their government, in soliciting, procuring and keeping a fund, of not less than one hundred thousand dollars, for the purpose of establishing and endowing a college or institution of learning for educational purposes, to be established and operated when said fund of one hundred thousand dollars is procured; said college or institution of learning to be located at some point within the territorial bounds of said Synods, and to be under the supervision and control of said Synods.

That said persons composing said joint commissions did afterwards, to-wit, on the 8th day of October, 1879, for the purposes and

under the powers in them vested, agree in writing upon a plan of endowment and upon a constitution by which they were to be governed in soliciting and creating said fund, copies of which said plan of endowment and constitution are herewith filed. Among other things in said plan of endowment it is provided that the name of said Joint Commission shall be 'The Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church;' that the commission shall have its business office in the City of Warrensburg, Johnson County, Missouri, and the officers of said commission shall be a President, Vice-President, Secretary and Treasurer.

That pursuant to said constitution said joint commission did, after the adoption of said plan of endowment and constitution, elect and appoint James H. Houx, as President, Granville L. Moad as Vice-President, Benjamin Eli Guthrie, Secretary, and Harvey W. Salmon, as Treasurer of said Commission.

Wherefore, the petitioners pray this honorable court that the said joint commission, composed of the parties aforesaid may be united into a corporation, for the period of ninety-nine years, under the name of 'The Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Church,' for the purposes hereinbefore set forth, and with the powers, duties and obligations as in said plan of endowment and in said constitution declared, and that said plan of endowment and said constitution so filed herewith may be the constitution and organic law of said Association.

HENRY NIELL,

Attorney for Petitioners.

Filed Oct. 6, 1880, H. S. Witherspoon, Clerk.

State of Missouri, County of Johnson, ss.

Be it Remembered, That heretofore, to-wit, on the 21st day of October, A. D. 1880, in the Circuit Court within and for said County of Johnson, the following among other proceedings were had, made and entered of record; that is to say, "James H. Houx, Ben Eli Guthrie, and Granville L. Moad, plaintiffs and petitioners, *ex parte*, petitioned incorporation.

Now come the said petitioners by attorney and present to the court their petition, together with a copy of their constitution, plan of endowment and articles of association, and, after fully seeing, hearing and considering the same, the court finds that heretofore, to-wit, in the month of October, A. D., 1874, J. H. Houx, G. L. Moad, T. S. Love, E. D. Pearson, E. P. Pharr, Ben Eli Guthrie, W. J. Garrett, J. C. Shepherd, T. J. Johnson, W. O. H. Perry, J. B. Green, Wm. A. Singleton, were by the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church duly appointed as a joint educational commission for said Synods for the purpose of and with the power and authority to provide and adopt a plan of endowment and constitution for their government in soliciting, procuring and keeping a fund of not less than

one hundred thousand dollars for the purpose of establishing and endowing a college and institution of learning for educational purposes, to be established and operated when said fund of one hundred thousand dollars was procured, said college or institution of learning to be located at some point within the territorial bound of said Synod, and to be under the supervision and control of said Synods.

That said persons composing said joint commission did, afterwards, to-wit: on the 28th day of October, 1874, for the purpose and under the powers in them vested, agree in writing upon a plan of endowment and upon a constitution by which they would be governed in soliciting and creating said fund—copies of which said plan of endowment and constitution are filed in said court with plaintiffs' petition.

That among other things in said plan of endowment it is provided that the name of said joint commission shall be 'The Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church.'

That said commission shall have its business office in the City of Warrensburg, Johnson County, Missouri, and that the officers of said commission shall be a President, Vice-President, Secretary and Treasurer; that after adopting said plan and constitution said commission did pursuant therewith elect and appoint James H. Houx as President, Granville L. Moad, as Vice-President, Benj. Eli Guthrie as Secretary and Harvey W. Salmon as Treasurer of said Commission.

It is therefore ordered, adjudged and decreed by the court here that the said joint commission composed of the parties aforesaid be and hereby is united into a corporation for the period of ninety-nine (99) years under the name of 'The Educational Commission of the McAdow, Missouri, Ozark and Missouri Valley Synods of the Cumberland Presbyterian Church for the purpose herein set forth and with the powers, duties and obligations as in said plan of endowment and in said constitution declared, and that said plan of endowment and said constitution so filed and presented to this court with plaintiff's said petition, be and is the constitution and organic law of said commission.

Witness my hand and seal of our said court hereto affixed this 14th day of Sept. A. D. 1881.

H. S. Witherspoon, Clk.

(Seal)

By W. K. Morrow, D. C.

Filed September 16th, 1881, at 11:30 A. M.

J. R. Kelley, Recorder.

State of Missouri, County of Johnson, ss.

I, John R. Kelley, Recorder of Deeds for Johnson County, Missouri, certify that the foregoing instrument was filed in my office on the 20th day of September, 1881, at . . . M. and was by me duly recorded in Book No. 46, pages 152 to 166.

Witness my hand and seal the day and year aforesaid.

(Seal)

J. R. Kelley, Recorder.

Filed September 21st, 1881.

Mike K. McGrath, Sec'y of State

6. COPY OF INCORPORATION OR CHARTER OF MISSOURI VALLEY COLLEGE, Record Book of Missouri Valley College, Marshall, Missouri, 1888, pages 3 to 8, beginning at line 23, page 96, of said record, with the words, 'ARTICLE I,' ending with line 16, page 105 thereof with the words, 'be provided therein,' and reading as follows:

"ARTICLE I. Name.—The name of this Association shall be Missouri Valley College, and the college and principal office of the association shall be at the City of Marshall, in the County of Saline and State of Missouri.

ARTICLE II. Trustees.—Sec. 1. The undersigned, Erasmus D. Pearson, John C. Cobb, William T. Baird, Alphonso C. Stewart, James E. Ritchey, Thomas M. Casey, Peter H. Rea, James M. Stevenson, George W. Wilson, Colley B. Holland, Will D. Johnson, George L. Osborne, and Dean D. Duggins shall constitute the first Board of Trustees and shall continue in office until their successors are duly elected or appointed and qualified. The said Erasmus D. Pearson, John C. Cobb, William T. Baird and Colley B. Holland of the Synod of Missouri, and Will D. Johnson, of Kansas Synod, shall be and continue such Trustees for the term of six years; and the said Alphonso C. Stewart, James E. Ritchey, George W. Wilson, of the Synod of Missouri, and George L. Osborne, of the said Kansas Synod, shall be and continue such Trustees for the term of four years; and Thomas M. Casey, Peter H. Rea, and James M. Stevenson, of said Synod of Missouri and Dean D. Duggins of the said Kansas Synod, shall be and continue such Trustees for the term of two years.

Sec. 2. The said Synod of Missouri shall from time to time elect the successors to its members on said Board of Trustees as their respective terms expire and the said Kansas Synod shall likewise elect successors to its members to serve for a term of six years and until their successors are elected and qualified.

Sec. 3. Upon such election said Synods shall grant to such person a commission in writing, signed by its Moderator and Clerk, stating therein whom such member is to succeed.

Sec. 4. In case of the death, resignation, or refusal to act of any member of said Board, the Synod so electing any such member shall at its next meeting thereafter fill such vacancy.

Sec. 5. The said Board of Trustees shall have the general management and control of the business of said college, the corporate name of which shall be Missouri Valley College, by which name it shall be known and designated, sue and be sued, receive and hold property, contract and be contracted with.

Sec. 6. Seven members of said Board of Trustees shall constitute a *quorum* for the transaction of business.

ARTICLE III. Purposes.—The Purposes of this association are the following:

1. To acquire the legal title to and hold sufficient lands for the proper, necessary and convenient buildings of the association, with a suitable campus.

2. To erect and maintain a suitable college edifice or edifices and other proper and suitable buildings for the purpose of said college.

3. To found, build, maintain and operate a college for liberal and thorough instruction in all the arts, sciences and humanities, and to provide means and appliances for thorough education in all the branches of regular collegiate instruction and all human learning.

4. To receive, have and hold from the Educational Commission of the Synods the Education Fund of one hundred thousand dollars (\$100,000.00) raised by said commission and now held by it for said college and to invest and preserve said endowment fund and collect and receive the income and profits arising therefrom and apply the same to the purposes and objects of said college, but no part of the principal sum of said endowment fund is ever in any manner to be applied or used or in any way lessened or diminished, but the same to be sacredly preserved intact and safely invested in good bonds or other securities, or at the highest legal rate of interest prudently obtainable. The interest only of said permanent fund and of all additional contributions thereto shall be used in payment of the salaries of the professors of said institution of learning; but if any part thereof may, in the judgment of the Trustees, not be necessary for that purpose, then such excess of interest may be otherwise used for the support of said institution as may be directed by said Trustees and in case said principal fund becomes impaired, or for any cause reduced below \$100,000.00, then such income on the remainder shall not be used, but added to the principal and reserved until the same be made up and restored to its original sum of \$100,000.00.

5. To accept, receive, have and hold any and all gifts, grants, bequests, devises, donation and contributions of money and property for the erection and maintenance of said college edifice and other proper buildings, and the improvement of the grounds of the association, and also for the founding, building and providing for libraries, museums, cabinets, laboratories, dormitories, conservatory of music and gymnasiums in connection with said college, and also for the founding and conducting of free scholarship or scholarships partly free as may be prescribed by the donors. Also the founding and maintenance of lectureships, professorships and chairs of instruction in said college. The word scholarships as used in this article means and shall be held to mean maintenance for a scholar; foundation for the support of a student, and the faculty of the college under the regulations provided by the Board of Trustees shall designate the beneficiaries of such scholarships, provided that the donor may designate the class of such beneficiaries.

6. To accept, receive and hold any and all donations, gifts, grants, devises and bequests as additions to the said endowment fund, and when so received to become a part thereof and held and managed in the same manner and for the like purpose as the original fund of \$100,000.00 and under the same limitations.

ARTICLE IV. Powers.

1. The Board of Trustees shall adopt all reasonable by-laws, not inconsistent with the laws of the land, and these Articles of Association, and may prescribe proper rules and regulations for its officers, agents and employees.

2. The Trustees shall meet at least once in each year at Marshall, Mo., and oftener if deemed best; require written reports from all officers, agents and employees of the condition, necessities and prospects of the business and matters of the college committed to them respectively.

3. The Board of Trustees shall employ a faculty, consisting of a President and such other professors, assistants and teachers as may be deemed necessary, and agree upon and fix the salary or compensation to be paid to each.

4. The Board of Trustees are authorized to employ all such workmen, agents, mechanics and employees as may be necessary in the prosecution of the purposes of said association, and to fix their compensation; provided, that they shall not mortgage or otherwise encumber any grounds, buildings or other property of the college for any purpose whatever.

5. The Board of Trustees shall fix the amount of fees, tuition and other charges of students and other persons seeking admission to or instruction in said college or any department thereof.

6. Said Board of Trustees shall upon the recommendation of the Faculty, confer all academic degrees upon the graduates and post-graduates of said college, and upon other worthy persons, distinguished for culture and learning, provided that no honorary degrees shall be conferred relating to any department which is not at the time being actually taught in said college.

7. Said Board of Trustees shall make report in writing to each of the Synods within said states at their respective annual meetings of the condition, prospects and necessities and wants of the college, showing the number and positions of the faculty, the number, age, sex, advancement, time of attendance of pupils for the collegiate year last past, and also a particular and detailed statement of all moneys received from whom and on what account, with a like statement and account of all disbursements, and also a particular statement and account of the investment of the said endowment fund, and of each and every fund under its management and control, with the proceeds and income of each.

8. That said Board of Trustees shall keep all permanent funds of said association invested so as to secure and yield the largest income thereon, and they shall only apply the profits and income thereon, together with the income arising from tuition, fees and other charges and resources to meet the current expenses of said colleges, and are hereby expressly forbidden to encumber, charge, use or apply in any manner the principal of any endowment fund or other permanent fund for any debt or obligation of the said college; and this shall be notice to all persons dealing with said Board or its agents that all such permanent funds are not holden for

any liability of said College. But it shall be the duty of said Board to apply all profits and income from tuition, fees and other sources, to the payment of any such liabilities.

ARTICLE V. OFFICERS.

1. The officers of the Board shall be a President and Vice-President, who shall be members of the Board, a Secretary, who may or may not be a member of the Board, and a Treasurer, who shall not be a member of the Board.

2. No member of the faculty shall be a member of the Board of Trustees.

3. The terms of the officers shall be for one year, and until their successors shall be duly elected or appointed and qualified.

4. The treasurer shall give bond in double the amount of money and securities likely to come or be in his hands for the term of his office, with not less than five good and solvent sureties, to be approved by the Board.

5. The Treasurer shall make to the Board quarterly statements of the condition of the treasury, and a full statement of his accounts at the annual meeting of the Board, when the Board shall make an examination of and list each and every security, together with all funds and moneys in his hands under his control. And said Board may at any time inspect his books, papers, securities, funds and moneys and may, in their discretion, suspend or dismiss him and appoint his successor.

6. The further duties of the officers shall be the same as usually devolve upon such officers, and as shall be prescribed by the by-laws of the association, and other necessary officers may be provided for in the by-laws, and their duties prescribed, and any officers may be required to give bond, conditioned as may be required.

7. The Board shall meet at least once a year and as much oftener as may be required by the Synods aforesaid, but it shall appoint an executive officer or committee of not more than three members to manage and look after the interest of the association in the vacation of the Board and to receive and examine the quarterly statement of the Treasurer.

8. The Board of Trustees shall fix the salary or compensation of the Treasurer and Secretary, and may allow themselves their actual expenses in attending the meetings of the Board.

ARTICLE VI. Faculty.

1. The faculty of the college shall hold their respective chairs for such term as the Board of Trustees shall prescribe.

2. The faculty shall have the internal management and discipline of the school and shall make all needful rules and regulations for the government of the students and the conduct of all persons connected with the institution in and about its buildings and grounds. The faculty shall have charge of the college instruction, its curriculum, classes, teachers, books and employees, and over the admission of students to the college and they shall have power to enforce discipline and obedience and may suspend or expel students from

the college, and said faculty shall have and exercise all other power and authority usually possessed and exercised by the faculties of such institutions and necessary to promote the success of the enterprise and the advancement of education and learning.

3. The faculty may confer all academic degrees and honors upon the students who have met the requirements of the institution in that respect, as also honorary degrees as hereinbefore provided.

ARTICLE VII. Amendments.

Q. The Articles of Association may be amended by the Board of Trustees at any regular annual meeting, provided that notice of such amendment shall be filed, with the amendment proposed, at the annual meeting next prior thereto, and provided also that said amendment must be approved by all the said Synods.

2. The by-laws of the association may be amended as shall be provided therein."

7. ADMISSION THAT EDUCATIONAL COMMISSION MADE REPORTS TO ITS SEVERAL CONSTITUENT SYNODS ANNUALLY, AND THAT MISSOURI AND KANSAS SYNODS OF THE CUMBERLAND PRESBYTERIAN CHURCH WERE THE LEGAL SUCCESSORS OF THE MCADOW, MISSOURI, OZARK AND MISSOURI VALLEY SYNODS THEREOF:—Beginning at line 24, page 105, of said record, with the words, 'It is agreed,' ending with line 21, page 106 thereof with the words, 'Missouri Valley College,' and reading as follows:

"It is agreed that the Educational Commission referred to made annual reports of its progress and the amounts of money collected and on hand for its purpose from year to year of each annual meeting of the Missouri Synod of the Cumberland Presbyterian Church and to the Ozark Synod of the Cumberland Presbyterian Church and to the McAdow Synod of the Cumberland Presbyterian Church and to the Missouri Valley Synod of the Cumberland Presbyterian Church up to the year 1887, and that during the year 1887, the Kansas Synod of the Cumberland Presbyterian Church became the successor to the Missouri Valley Synod, by change of name, and that such reports were continued until the day of, when the McAdow Synod, the Missouri Synod and the Ozark Synod were consolidated into one Synod, known as the Synod of Missouri of the Cumberland Presbyterian Church, and that the Missouri Synod was thus organized or consolidated and comprised the territory of the State of Missouri, and that the Kansas Synod of the Cumberland Presbyterian Church comprised the territory of the States of Kansas, Nebraska and Colorado, and that said reports of said Educational Commission were continued to be made annually to said reorganized Synod down until the date of the incorporation of the Missouri Valley College."

8. REPORT OF THE EDUCATIONAL COMMISSION CONCERNING THE LOCATION OF MISSOURI VALLEY COLLEGE: Beginning with line 25, page 115, of said record, with the words, 'To the Moderator,' ending with line 23, page 118 thereof with the words, 'Sec'y Ed. Commission,' and reading as follows:

"To the Moderator and Members of the Synod of Missouri in session in Kansas City, Mo., May 8th, 1888:

Dear Brethren: It is both my duty and pleasure to report to your reverend body of the following recent action of the Educational Commission of the Co-operating Synods:

1st. Ninety days prior to the 31st day of March, 1888, the executive committee, as empowered by the Commission, the \$100,000.00 of the endowment having been secured, made publication for sealed bids for the location of the College, requiring that by said 31st day of March, as aforesaid, all such bids should be in the hands of J. B. Mitchell, the President of the Commission.

2d. On the 4th day of April, ultimo, a called meeting of the Commission was held in the Cumberland Presbyterian Church, Kansas City, Mo., at which twelve commissioners were present. Sealed bids were presented by the President from the following points: Patwin, Kan., Maryville, Odessa, Marshall and Sedalia, Mo.

The bids of the first two not justifying a visit by the Commission, the President was directed to write a letter notifying them of this fact. The bids of the other places, viz., Odessa, Marshall and Sedalia, were carefully considered and it was resolved by the Commission to visit these places in the order named, on April 10th, 11th, and 12th, respectfully, and the secty. was directed to inform those several places of the purpose of the Commission.

3d. Accordingly, on Tuesday, April 10th, the Commission met in the Cumberland Presbyterian Church, Odessa, Mo., with seven members present, and proceeded to view the proposed location for the College and to inquire into the suitability of Odessa as a seat for the proposed College as per requirements of the plan.

On Wednesday morning, April 11th, the Commission met in the Cumberland Presbyterian Church, Marshall, Mo., with eight commissioners present, and proceeded to examine and inquire into Marshall's advantages for the location of the College.

On Thursday morning, April 12th, the Commission met in the Cumberland Presbyterian Church, Sedalia, Mo., with nine commissioners present, and proceeded as in the cases of Odessa and Marshall, to examine and inquire into Sedalia's advantages as a location for the College.

4th. On Friday, April 13th, the Commission met in the Cumberland Presbyterian Church, Kansas City, Mo., ten members present and re-examined the bids and heard delegations from the several places visited and after carefully weighing all the advan-

tages offered by these places respectively and after earnest prayer to God for special guidance, the *Commission* proceeded under a manifest sense of great responsibility to vote by written ballot to determine the location.

A majority of the votes on the first ballot being for Marshall, on motion the vote was made unanimous, and Marshall, Saline County, Mo., was declared the place selected for the location of the College.

5th. The attention of your reverend body is also called to the following items of business transacted by the Commission during the session of April 13th.

(1) The publication shall be made for the privilege of naming the College, said publication and time for opening to run until June 1st, 1888.

(2) The executive committee was directed to procure a charter for the College.

(3) It was recommended to the interested Synods to elect nine trustees for the College, as follows: Synod of Missouri, five; Kansas Synod, two; Ozark Synod, two; and that the term of office of the trustees be during efficiency, and that the Synods make the Board of Trustees a self-perpetuating body, in that they be allowed to recommend their successors in office.

(4) The executive committee was directed to procure plans for the College building.

(5) The Synods were requested to give their opinions as to whether the Commission shall go forward to the erection of the College building.

Respectfully,

W. B. Farr,
Sec'y Ed. Commission."

9. REPORT OF THE EDUCATIONAL COMMISSION TO THE MISSOURI SYNOD OF THE CUMBERLAND PRESBYTERIAN CHURCH RATIFYING THE LOCATION OF THE COLLEGE: Beginning with line 8, page 126 of said record, with the words, 'The Committee on Education,' ending with line 30, page 128 thereof with the words, 'E. D. Pearson, Chairman,' and reading as follows:

"The committee on Education presented the following report, which was concurred in and the recommendations unanimously adopted, as follows, viz.:

Your Committee on Education respectfully submit the following:

We had referred to us the report from the Secretary of the Educational Commission; also a report from the Board of Trustees of Missouri Valley College. From these reports we learn:

1st. That the amount of endowment required in order to locate the College has been secured by the Commission and turned over to the Board of Trustees. The whole amount of endowment thus secured is \$104,380.08.

2d. The College has been located at Marshall, Saline County, Mo.

3d. The charter has been secured according to the laws of Missouri, and the institution named Missouri Valley College.

4th. A deed to 40 acres for College campus has been made.

5th. To build the College edifice the Trustees have received from the Commission, in notes and money, \$38,000.00 and 74 lots (not yet sold) valued at \$22,000.00.

6th. That the plan of a building has been adopted, and the building under contract for \$39,400.00 with a provision of two changes—one increasing the height of the first story two feet and the second change a better quality of brick to be used in the west and north fronts, which would make the contract \$42,450.00. The work on the foundation is to be commenced immediately, and finished, if possible, by the close of this year.

We are of the opinion that much credit is due the Commission, and especially the President, for his diligence in this work, and gratitude should be given to the Great Head of the Church for his special leading to our success in this enterprise. The church is to be congratulated in the prospect of having a College she can call her own in this state, resting upon a basis so solid and giving good promise to be opened for pupils by September, 1889.

The Board of Trustees have founded a chair of Biblical instruction. It is hoped that some royal son of the Church, and heir of God, whose purse is ample and whose heart is filled with the love of God and the pure desire of accomplishing permanent good for his Church and mankind in a special way for the coming ages, will endow this chair.

The general endowment should be increased until \$200,000 is secured, and your committee believe this will be done within five years from the day the College opens.

We think the Synod should take courage and press on with increased faith, love and energy in the noble work of Christian education.

We have had referred to us the paper from the Board informing you of the resignation of G. W. Wilson and asking you to appoint Rev. James Martin of Marshall, Mo., to fill this vacancy.

1st. We recommend that you grant said request and appoint Rev. James Martin to fill said vacancy.

2d. We recommend that you authorize your Treasurer to pay Dr. J. B. Mitchell \$114.00 the amount he has paid out for traveling expenses and stationery during the past year.

3d. We recommend that you urge upon the ministers and congregations within your bounds to assist the Board in the sale of the lots that remain unsold, as the Board will need the proceeds to complete the payment for the College building, and that they assist and encourage in any and all other work which tends to the upbuilding of this institution.

4th. We herewith return to you the reports from the Secretary of the Educational Commission and the Secretary of the

Board of Trustees, and we recommend that they be made a part of the written history of this Synod.

Respectfully submitted,

E. D. Pearson, Chairman."

10. MINUTES MISSOURI SYNOD CUMBERLAND PRESBYTERIAN CHURCH, 1888, PAGES 109-111, SHOWING SOURCES OF FUNDS TO FOUND MISSOURI VALLEY COLLEGE—Beginning with line 22, page 130 of said record with the words, 'To the Moderator and Members, ending with '18, page 141, thereof with the words, 'Secretary Educational Commission,' and reading as follows:

"To the Moderator and Members of the Synod of Missouri:

The Educational Commission of the cooperating Synods bring greetings, to your body and your annual meeting of 1888. We hail you happy in the completion of that grand and noble work which has engaged your minds and hearts for more than a half score years.

The minimum amount of \$100,000.00 College endowment has been raised, the college located and named, the charter has been secured, also a sufficiency of funds secured for the building and ample grounds for all college purposes. A Board of Trustees has been elected by the cooperating Synods and all the assets of the College passed over to the control of said Board of Trustees.

The President of the Educational Commission has turned over to the Finance Committee of said Board and received their receipt for the following:

For endowment in cash, notes and securities.....	\$104 381.08
Deed to 40 acres for College campus, for College building in cash, notes and etc.....	38,000.00
Seventy-four lots unsold, to be used for building, valued at.	22,000.00
Bequests secured.	2,500.00
Bequests promised, but no papers in hand.	22,500.00

The charter of Missouri Valley College and also of the Educational Commission, also the records of the Educational Commission, and all papers that had come into the possession of the Commission.

The completion of this work by the Educational Commission is a cause of rejoicing and heartfelt gratitude should be given to our Heavenly Father for His providential dealings in leading us to success that has crowned our efforts.

This in all probability will be the last report of the Educational Commission to your body. It adjourned on the 11th of September, 1888, subject to the call of the President, yet hoping that there will exist no cause for the President to make that call.

This being the case, the Secretary has allowed himself to write minutely and at length in order that the Synod may have somewhat of a review of the work done by the Educational Commission. For several years before the organization of the Commission it was the

cherished idea of brethren on both sides of the Missouri River to secure the cooperation of the Church in the state in amply endowing our College. Local preferences were somewhat in the way of this purpose being accomplished. These schools all passed away. Local preferences were overcome, and the Synods of the state and west of the state to the mountains were sufficiently enlisted to secure the appointment of delegates to meet and confer together on methods, plans, etc. Their meeting was a success.

After this agreement was made, every minister in the state found much old rubbish to be removed before we could begin even a beginning of this work. The work undertaken was greater than we calculated, and required much more time than we had anticipated. Hearts filled and guided by the Holy Spirit brooked all opposition and turned a deaf ear to the prophecy that another failure would only be added to the list of failures now charged upon the Church.

With the undying conviction that our Church in this state must have a school for the prophets or otherwise see it slowly but surely become extinct in this promising field of growth and usefulness, they plead with God and man until they have seen success crown the effort.

It was at Sarcovie, Mo., on the 27th day of October, 1874, at the meeting of the Ozark Synod, that representatives from several Synods met in council and formulated the system of endowment under which the work should be prosecuted until the one hundred thousand dollars was secured, holding as these representatives did that it would not be safe to open the institution with a less permanent endowment than that sum.

Each Synod elected its quota of the Educational Commission as per agreement among them as follows: McAdow Synod, Rev. J. B. Mitchell, D. D.; Rev. E. D. Pearson, Ben Eli Guthrie, Esq. Missouri Synod, Rev. J. H. Houx, Rev. T. S. Love, Rev. P. G. Rea. Ozark Synod, Rev. T. W. Pendergrass, Rev. E. E. Baker, and W. H. Ritchey, Esq. Dr. J. B. Mitchell was elected President, Ben Eli Guthrie, Esq., Secretary, and W. W. Riddings, Esq., Treasurer. Mr. Riddings was invested with the exclusive power of executing the plan in the manner of employing agents, directing their work, receiving their reports, etc., as well as receiving and safely investing the funds secured. Years rolled on and but little or no progress was made in the work. Mr. Riddings employed one of the most capable men we have in the state to act as General Agent in soliciting the endowment, who reported himself to Mr. Riddings as ready at his bidding to enter the field, but for reasons not connected with this said agent or known to the Church working orders were not issued.

The Church in this enterprise followed the example of the Israelites of old when they refused to enter the land immediately, the land flowing with milk and honey, but turned aside and wandered in the wilderness for thirty-eight years. Finally, we were then able to work, amply able. We have wandered round and round

for fourteen years, and not until now have we been ready to pass over and enjoy the fruition of our hopes. Who can portray what the improved condition of our country and of our Church would have been had we then possessed ourselves of this inheritance?

The murmurings, dissatisfaction and fault-finding against Moses and Aaron have their counterpart in this history. When we look over the past it does seem that we have had almost everything to contend with that could be brought against us; numerous financial reverses, the withholding of the latter rain, thereby causing shortness of crops, visitation of cinch bugs and the army worm, the rise and fall in the price of stock, the financial failure of many leading men in our Church, have fallen upon us during these fourteen long years. Often we were made to feel and think if not to say, surely, 'All these things are against us.'

During the years 1880 and 1881 the plan of endowment was somewhat remodeled and Dr. Mitchell having resigned to his Synod as a commissioner in 1875, Rev. J. H. Houx was elected President of the Educational Commission. Among other changes in the plan the President was now invested with the responsibility of seeing that its provisions were executed instead of the Treasurer, of receiving all money for endowment purposes and of paying the same over to the Treasurer for investment and safe keeping. Faithfully and constantly did he traverse the remotest borders of our territory, urging upon a listless people the absolute necessity of a church and Christian institution for the good of the state and nation as well as the life and growth of our own Church. It required line upon line, line upon line, precept upon precept, precept upon precept, here a little and there a good deal. His work of agitation and preparing the way was a necessary work and has been a great benefit to the success of this enterprise. He has been 'John the Baptist.' I question if the church appreciates fully the value of his work. Like David in building the temple, he collected and caused a great material to be prepared from which we could build this institution. The progress made was slow. The more ardent in spirit became anxious, yea, restless, and cried out for more vigorous efforts to be put forth.

In the fall of 1885, at the meeting of the Synod of Missouri, in Odessa, Bro. Houx submitted his resignation as a commissioner to take effect as soon as his successor could be elected and qualified for his office. The Synod at that meeting having elected Dr. J. B. Mitchell to fill a vacancy in the Commission, the latter body called him to the Presidency, and he commenced his official work November, 1885. For one year but little headway could be made beyond the adjustment of the forces for an aggressive movement. At times gloom and despondency, deep and painful, enveloped the future of the contemplated institution. In answer to the prayer of faith, and as the outcome of intense solicitude and attended by diligent inquiry, light sprang up amidst the darkness, and aid from an unlooked for source. Marvelous and gracious are the ways of God with His providential dealings with His people. We can but rec-

ognize this help in time of need as God's special providence for the good of His people, and the establishment of His kingdom. A number of places had been looking forward to the time when they would secure the location of this institution in their midst. A few noble brethren in Sedalia made a forward movement, which brought success to the view of about every child of the Church. This movement seemed as distinct and clear to the Church in arresting attention and inspiring confidence as the burning bush in awaking the attention of Moses preparatory to the deliverance of the Israelites. These brethren gave an outline of a proposition to the President of the Commission. In a condensed form it was as follows:

'We want that institution in Sedalia. We cannot wait for you to raise the full amount of endowment at the rate you are now succeeding. You now have in bank and securities \$29,000 and \$25,000.00 in bequests. If the latter can be made available making your amount \$54,000.00 we will give \$46,000.00, thereby completing a \$100,000.00 endowment, and we will add to our gift fifteen acres of ground for College purposes and \$25,000.00 to build your College edifice.' The President of the Commission saw the light. He advised the other members of the Executive Committee of this. They recognized the hand of God. Deliverance, full and complete, at last had come, and in a way unlooked for.

The President had frequent and continued correspondence throughout the Synod until the words passed through every Presbytery that victory was now within our grasp. Shall we claim it? Will we reach out our hand and clasp it? It can be had if we raise \$25,000 endowment at once. Every Presbytery appointed its agent to raise the \$25,000.00. These men were like good old Nehemiah. They wept when they saw the broken walls and burnt gates of our Jerusalem and said now to the people, 'Come and let us rebuild these walls.' The people had a mind to the work and it was done. We came to the meeting of the Commission Sept. 13th, 1887, as we had never assembled before, flushed with the evidence of complete success. The Sedalia brethren made good their promise. They placed in the hands of the Executive Committee a bond for \$46,000.00, bearing 8 per cent interest, a bond good and valid, together with the guarantees for the other items in their outline. All these to be returned to them in good faith should we fail to locate the College in Sedalia.

Advertisements were made then for the propositions to secure the location of the College. We waited the ninety days required by our charter. Five bids were received, bids that did great credit to the places making them. After careful investigation and prayerful deliberation, having visited Odessa, Marshall, and Sedalia, we accepted the bid made by Marshall, as in our judgment the best before us, which was as follows:

Endowment	\$46,000.00
Building funds	38,000.00
74 lots to be sold for building funds, estimated	22,000.00

40 acres for college grounds, estimated value . .	32,000.00
Total	\$138,000.00

The Synods were then called in special meeting and elected a Board of Trustees of thirteen members, good and true, seven to constitute a quorum. This was in the month of May. The Synods instructed the Board of Trustees to prepare immediately to erect the building. Said Board met in Marshall and elected and appointed all the necessary committees. The charter prepared by the Executive Committee was read, considered carefully, and accepted item by item by the Board as the law governing them. It was then passed through the court and is now filed in the archives of the state.

The commission had before them many names for the institution, but finally and with great unanimity agreed that our College should be called "Missouri Valley College," a name euphonious and significant. We are pleased to find that it gives universal satisfaction. The plan adopted by the Trustees for the College edifice is a model of beauty—one that not only does credit to the architect, but which can be pointed to with pride by the citizens of Marshall, and the membership of the Synods. The Board has advertised for bids from contractors and will meet the 15th of October to open bids and let the contract.

The Board of Trustees have given prominence to the Christian feature of this institution by providing that there shall be one chair to be known as the chair of Biblical Instruction, from which the Bible will be taught as distinctly as is mathematics or the languages in the respective departments.

It is worthy of special note that the entire cost in securing this \$100,000.00—this \$60,000.00 for the College building and the forty acres for College campus grounds—has been a nominal amount, but little beyond the cost of the traveling expenses of the Educational Commission in its annual and semi-annual meetings. I question if the like is known in the establishment of another institution of learning in our land. The work done by Dr. J. B. Mitchell, since he was called to the presidency of the Commission in November, 1885, has been freely contributed by him—the time, labor and sacrifice—in aiding you to establish this College for the promotion of Christian education. The time he has spent exclusively to this work since the above date has amounted to about 200 days. If he had been paid for this time, as you arranged to pay the President at your meetings in October of the year above mentioned, he would have received \$600.00 for his said services. But he voluntarily declined to receive any compensation for these labors.

An itemized account of his traveling and other necessary official expenses for the last year was examined and allowed by our financial committee with the request that the Synod pay the same at an early day. Said expenses aggregate \$114.00.

And now after years of waiting and working through many seasons of darkness and some of shine, after the prayers and tears and gifts of many, many friends, we stand and proclaim that the minimum amount of endowment, \$100,000.00, has been reached and the work of the Educational Commission is finished. The Board of Trustees—our successors in this work will begin work on the foundation for the edifice within thirty days with the bright hope and strong assurance that twelve months from to-day we will have the Missouri Valley College fully equipped with an edifice which the entire Church and the citizens of Marshall will be happy to own, with a complete corps of able teachers, and we trust the school rooms filled with bright minds anxiously seeking after scientific, classical and Biblical knowledge, thereby fitting themselves well for the work of life before them. We trust and hope that within her walls many may be awakened unto and fitted to go forth as heralds of the Cross, to assist the blind, the deaf, the lame and the impotent unto the pool of Siloam; that her character may be formed and fitted to honorably occupy any position in state, business or church, maintaining the spirit and principles taught by the Divine Redeemer.

And now let every heart be glad and rejoice. Let every tongue speak forth the praises of Him in whose providence we have been led to the success that we have now attained.

Let all the Church unite in rendering praises to our gracious Heavenly Father for His goodness and mercy to us as a church.

E. D. Pearson,

Secretary, Educational Commission."

11. STEWART PROPOSITION TO BUILD CHAPEL.

Beginning with line 5, page 388 of said record, with the words, 'On condition that,' ending with line 24, page 389 thereof, with the words, 'September 10, 1905,' and reading as follows:

"On condition that the citizens of Marshall, Missouri, will by September 1st, 1905, give the sum of ten thousand dollars either to the permanent endowment fund of Missouri Valley College, or partly to said fund and partly to build the boiler house plant hereinafter mentioned, and said college will by said date raise the sum of forty thousand (\$40,000.00) dollars additional in new money, to be used for the purpose hereinafter stated and none other, I will pay to erect for said College a chapel, library and music building, to cost, including the seating of the chapel and gallery and wiring, piping and radiators for said new building, to be at least one hundred and twenty feet long by sixty feet wide, not to exceed in cost thirty thousand dollars, the plans and specifications therefor to be satisfactory to the Board of Trustees and the President of said College; said chapel, library and music building to be contracted for by said College and to be built by it under the supervision of a building committee appointed by said Board of Trustees; conditioned further that a suitable, proper and creditable building for the purpose and of the size aforesaid can be com-

pleted free from liens or debts for not exceeding said sum of thirty thousand dollars, I to be under no obligations, however, to pay more than the actual, suitable and proper cost of said building and credited on account of the cost thereof with the sum of ten thousand dollars already paid by me to the Treasurer of said College and also with any income on said ten thousand dollars derived or accrued before said sum is expended on said building.

The above mentioned sum of forty thousand dollars to be expended for the following purposes:

1st. A suitable boiler house plant to heat the present College, Brickhead dormitory and said new chapel, library and music building. If the \$10,000 first above mentioned is not used for or shall not be sufficient to complete the same free from liens or debt.

2d. To move the library and chapel in the present College building to said new building, making such changes in the present College building as may be proper on account of such removal, providing a record vault and furnishing the new chapel, library, reading, toilet and music rooms.

3d. All the remainder of said \$40,000.00 to the permanent endowment fund of said College.

And the further condition that this proposition be completed within such time that the building of said chapel, library and music building can be begun by September 10, 1905."

12. ARTICLES OF ASSOCIATION OF THE MARSHALL LAND SYNDICATE, TO SECURE THE LOCATION OF MISSOURI VALLEY COLLEGE AT MARSHALL, MISSOURI: Beginning with line 6, page 440 of said record, with the words, 'Whereas, on the,' ending with line 30, page 443, thereof with the words, 'G. W. Lankford,' and reading as follows:

13. "Whereas, on the 4th day of February, 1888, James A. Gordon, trustee, of Saline County, Missouri, purchased of John Haggin and his wife the following described tract of land in Saline County, Missouri, to-wit: The south half of the southwest quarter of Section Fourteen (14), Township Fifty (50), Range Twenty-one (21), containing eighty acres more or less for a consideration of twelve thousand dollars (\$12,000.00), and said trustee, James A. Gordon, did on same day purchase of John L. Coyle and wife the following described tract of land also situate in Saline County, Missouri, to-wit: One hundred acres more or less off the north side of the northwest quarter of Section Twenty-three (23), Township Fifty (50), Range Twenty-one (21) and being all that part of said quarter section not heretofore sold by said Coyle to John A. Frey for a consideration of ten thousand dollars, making a total amount of twenty-two thousand dollars for the two tracts of land aggregating one hundred eighty acres. And whereas, the land purchased by said trustees of said Haggin was bought subject to an indebtedness of three thousand dollars, which is secured by deed of trust executed by said Haggin and wife to said James A. Gordon for John Catron, Sr., dated December 5th, 1885, and recorded

same day in Mortgage and Deed of Trust Record No. 23, page 27, in Recorder's office, Saline County, Mo.

And whereas, the title to the whole of said real estate was taken and vested in said James A. Gordon, trustee, for convenience, and whereas the real parties in interest and represented by said James A. Gordon, trustee, are as follows: to-wit: James A. Gordon, Dean D. Duggins, S. T. Potter, J. T. Conway, John A. Fray, J. P. Huston A. J. Graves, Andrew Olson, P. C. Armentrout, J. C. Lankin, G. W. Lankford, James Martin, John H. Herring, H. L. Huston, Hugh G. Allen, W. M. Walker, G. B. Blanchard, H. C. Sparks, M. H. Alexander, C. H. Vanstone, Marion Sparks, Jno. A. Yeagle, Jno. R. Hall, Abiel Leonard, A. J. Haynes, P. H. Rea, P. H. Franklin, C. P. Guthrey, I. O. Striker, F. M. Lail, J. H. Cordell, W. B. Glover, A. F. Vawter, Robert Bagnell, J. W. Barnhill, F. P. Sebree, and each of said parties has an equal undivided interest in said real estate. Each of said parties has assumed and agrees to pay an equal part of the indebtedness upon the Haggin tract, and whereas, all the parties hereto have executed to said Hagan their joint note for the balance of the purchase money, amounting to the sum of nine thousand dollars, dated the 4th day of February, 1888, and due twelve months after date, with interest thereon from date thereof at the rate of 8 per cent.

And whereas, all of said parties have executed their joint note to said John L. Coyle, of date, 4th day of February, 1888, for the whole of said purchase money, to-wit, ten thousand dollars, due twelve months after date thereof, at the rate of 8 per cent. The title to said real estate shall remain vested in James A. Gordon, trustee as aforesaid, until such time as a majority of the parties hereto instruct him to sell, convey or dispose of the same.

That after the sale of said property or any part thereof the said trustee is to apply the proceeds thereof first to the payment of the said purchase price, together with the interest thereon and the residue to be disposed of according to the wishes of a majority of the subscribers hereto, and in the event that said property should not sell for a sum sufficient to pay the purchase price and interest cash, and expenses, then the subscribers mutually agree and obligate themselves to divide the loss equally. It being understood and agreed that in all matters relating to the control, management or disposition of said land or any part thereof, we agree to abide by the vote of the majority of the subscribers hereto, and said trustee is hereby instructed and authorized to act promptly upon the majority vote of the subscribers hereto whenever such fact shall be brought to his notice by the certificate of the secretary, duly attested by the chairman, of any meeting of said subscribers. Should any of the parties hereto fail to make the payment of his portion or *pro rata* of said indebtedness after ten (10) days' notice by the trustee, the said trustee or any other one of the other parties hereto may advance said sum and thereby acquire in himself a proportionate interest in said property, but the failure to make such payment shall not relieve said party making such default from

an equal proportion of any loss, should any occur. The said James A. Gordon, trustees as aforesaid, hereby declares himself to be the trustee for the purposes aforesaid and accepts the same for said purpose and under the conditions and stipulations aforesaid and for no other purpose, and the other parties as beneficiaries and part owners herein consent to such declaration of trust and the terms thereof.

We hereby agree and mutually covenant with each other to faithfully perform and observe all the conditions and stipulations of this declaration of trust.

Witness our hands this 4th day of September, 1888.

James A. Gordon, Trustee

J. P. Huston.

Dean D. Duggins.

M. H. Alexander.

H. G. Allen.

J. T. Conway.

A. F. Vawter.

J. A. Fray.

P. C. Armentrout.

John N. Yeagle.

A. Olson.

P. H. Rea.

H. L. Huston.

J. C. Lamkin.

W. M. Walker.

A. J. Graves.

F. M. Lail.

P. H. Franklin.

John R. Hall.

S. T. Potter.

H. C. Sparks.

A. J. Haynes.

Robert Bagnell.

H. Leonard.

C. H. Vanstone.

J. H. Cordell.

James Martin

Geo. O. Blanchard

Marion Sparks.

I. O. Striker.

W. B. Glover.

J. W. Barnhill.

F. P. Sebree.

G. W. Lankford."

13. OFFER OF LAND SYNDICATE OF MARSHALL TO THE EDUCATIONAL COMMISSION OF THE CUMBERLAND PRESBYTERIAN CHURCH TO LOCATE COLLEGE AT MARSHALL, MISSOURI: Beginning at line 2, page 444, of said record with the words, 'To the members,' ending with line 12, page 454 thereof with the words, 'I. O. Striker, Merchant,' and reading as follows:

"To the members of the Educational Commission of the Co-operating Synods of the Cumberland Presbyterian Church of the States of Kansas, Colorado, Nebraska and Missouri having in charge the location of the proposed college:

Gentlemen: The citizens of Saline County beg leave to submit to your consideration the following proposition, to-wit: On the 4th day of February, 1888, a Syndicate of thirty-four of our citizens was formed, and purchased one hundred and eighty (180) acres of land adjoining the City of Marshall in Saline County at the price and sum of twenty-two thousand dollars (\$22,000.00). This was an absolute purchase, and the land was conveyed to a trustee under an article of agreement that the action of the trustee should be governed and controlled by a majority vote of the said thirty-four subscribers, with the further provision incorporated therein that the said real estate be tendered the Cumberland Pres-

byterian College Commission at the cost price thereof, including the interest thereon, for the purpose of locating and building a college on the same and permanently maintaining it. Forty (40) acres of this land, except eighty (80) foot street around the same was set apart for the campus and College ground purposes. The remaining one hundred and forty acres were laid out and platted temporarily with about five hundred and forty (540) lots approximating fifty (50) by one hundred and fifty (150) feet, with wide streets between the blocks and fifteen (15) feet alley through the same.

A value was then placed upon the lots ranging from fifty (50) to five hundred dollars per lot, according to location, aggregating the sum of one hundred and twenty-seven thousand nine hundred dollars. The forty acres reserved for the campus is of the highest, best and most desirable of the whole tract; and if divided into lots and sold according to the way the other lots have been sold, would be worth thirty-two thousand dollars (\$32,000.00).

Up to the present date there have been four hundred and fifty lots actually sold by subscription, at and for a sum aggregating one hundred thousand eight hundred dollars. These lots were sold to different parties and upon condition that the College be located within one mile of the court house in the City of Marshall, Sabine County, Missouri. For more particular information concerning said conditions, reference is here made to one of the printed blank forms of subscription marked Exhibit 'A' and filed herewith.

As to the actual value of the subscription list your attention is directed to a report at a special committee appointed for the purpose of examining the same, in which they say they 'believe that by reasonable diligence in the collection of the same, 95 per cent of the subscription will be realized in cash.' A copy of which said report is hereto attached and marked Exhibit 'B'. The purchase price of the one hundred and eighty acre tract was twenty-two thousand dollars. The proceeds of the sale of all lots, after paying the purchase price of the land, the interest thereon and the other incidental expenses, are to be turned over to your Commission upon the condition heretofore named and upon the further condition that all the money realized from the sale of said lots and the said cash subscriptions after completing the endowment fund to one hundred thousand dollars (\$100,000.00) shall be used in erecting buildings and in the improvement of the grounds.

The title to the 40-acre tract reserved for campus purposes, also the title to the lots unsold, is to be vested in suitable parties selected as your trustees, under the conditions theretofore named.

We therefore submit the following bid for the location of the said College:

40-acre tract for campus worth,	\$32,000.00
Amount realized for lots sold,	101,050.00
Amount unsold lots,	26,850.00
Cash subscribed,	2,560.00

Total bid 162,460.00

Subject to paying the purchase price, the interest thereon and incidental expenses.

In submitting to your consideration the above bid at Saline County, Missouri, for the location of said College at Marshall, we beg leave to call your special attention to the County of Saline, the City of Marshall and the many advantages which we think this location unquestionably possesses.

First. Saline County contains about four hundred and seventy thousand acres of land and is recognized as one of the first and finest agricultural counties in the state.

Second. The county has a population of about forty thousand no bonded indebtedness and has an assessed valuation of over eleven million, one hundred thousand dollars.

Third. There are now over ten thousand eight hundred children actually in the public schools of the county.

Fourth. Fuel is plenty and cheap. The best of wood can be delivered at from \$2.50 to \$3.00 per cord. The county is underlaid with the finest bituminous and canal coal. There are numbers of coal banks in different portions of the county in full operation.

Fifth. Marshall, the county seat, is situated in the center of the county, and elevated and commanding location and splendidly drained on all sides. There is not a healthier location in the State of Missouri.

Sixth. The city has a population of about five thousand, and is reached by two main trunk railway systems, the Chicago & Alton and the Missouri Pacific.

Seventh. The city has one of the finest systems of water works in the state, which were built at a cost of twenty-five thousand dollars. There are now in operation seventy-five plugs.

Eighth. The city is splendidly lighted with gas, by the Marshall Gas Company, the works of which cost thirty thousand dollars, and there are now in regular operation seventy public or street lamps.

Ninth. The people of Saline County and the City of Marshall believe in education and are the friends and supporters of schools. Marshall alone has two public school buildings, which cost the district forty thousand dollars, and has one of the best regulated public schools in the state. There are sixteen teachers employed therein. Besides, there are five buildings and most excellent schools maintained for the separate education of the colored children.

St. Xavier's Academy for the education of females, under the management of the Catholic Church, is in full operation. The building and ground cost about nine thousand dollars.

Tenth. There are seven Protestant churches (white) and one Catholic Church in the city with a total membership of two thousand six hundred, and owning church property in the aggregate to the amount of sixty-eight thousand dollars.

Eleventh. At a recent election held under the provisions of the 'Local Option Law,' saloons were abolished and there is not a saloon in the city.

Twelfth. Marshall has no indebtedness and has a surplus of about five thousand dollars in the treasury.

Thirteenth. There is not a college in the county and none on the south side of Missouri River nearer than Lexington, a distance of forty miles.

Fourteenth. The ground selected for the location is one of the most choice and valuable pieces of real estate in Saline County, beautifully situated on the south side of and adjoining the city, while it is splendidly drained on three sides, it is not too rolling to be considered 'choice hemp land.'

Fifteenth. It is estimated that for years past from one hundred twenty-five to one hundred and fifty students have been sent yearly from Saline County to Colleges and universities outside her limits.

Sixteenth. There are twelve (12) regularly operated banks in Saline County with a combined capital of six hundred and five thousand dollars, with deposits aggregating one million three hundred and eight thousand eight hundred and twenty-nine dollars.

Seventeenth. The Sappington School fund originally twenty thousand dollars, has increased until it is now at least forty thousand dollars. We are not authorized to say that any part of this fund can be used for the benefit of the College, but the trustees of this fund have, we are informed, adopted a resolution the general import of which is that the State of Missouri has made adequate provisions for the education of all poor children of the county, and that the fund is no longer needed for the purposes for which it was originally intended by the donor.

The trustees will take no action as to the disposition of this fund until the regular meeting of the board in August next. We have been assured by seven out of the ten trustees that after your College is located at Marshall the Sappington School fund can be utilized. The trustees were opposed to using the fund as a liner to secure the location at the College, yet they are friendly to the enterprise, and they say frankly that if our citizens secure its location independent of the Sappington School fund this would be a strong inducement for them to transfer this fund to the College to be used under the provisions of Dr. John Sappington's will and according to the intention of the donor.

Eighteenth. Our whole people, without regard to denominational feeling, are in sympathy with this enterprise. They want the College and we earnestly believe they will give the institution their hearty support.

We, therefore, earnestly urge at your hands a full investigation of the above facts and a favorable consideration thereof, and that you locate the College at Marshall, Saline County, Missouri.

Respectfully submitted,

P. H. Rea,
P. C. Armentrout,
D. D. Duggins,
Committee.

SUPPLEMENTAL REPORT.

Since the report of the Finance Committee herewith inclosed subscriptions in cash and for lots have been received by us to the amount of \$2,460.00, all of which is perfectly good and is included in our bid.

P. H. Rea,
P. C. Armentrout,
D. D. Duggins,
Committee.

Marshall, Mo., March 28th, 1888.

At a meeting of the Land Syndicate held this day the report of the above committee was unanimously adopted, there being present twenty-one members of said syndicate. The secretary was instructed to seal such bid and forward the same to Rev. J. B. Mitchell, D. D. Kirksville, Adair County, Mo.

P. H. Rea, Chairman.

Dean D. Duggins, Secty.

EXHIBIT 'A.'

Marshall, Mo., 18...

..... the undersigned, do hereby agree and bind to pay to James A. Gordon, J. H. Cordell, A. S. VanAnglen and J. P. Huston, as trustees, the sum of dollars for the use and benefit of the proposed Cumberland Presbyterian College to be located at Marshall within one mile of the public square, Saline County, Missouri. Said College to be under the management and control of the co-operating Synods of that denomination of Nebraska, Colorado, Kansas and Missouri.

Which said College must have an endowment fund of not less than one hundred thousand dollars; \$54,000 of said sum is now secured and in the hands of the Educational Commission of said Synods. One-third of my subscription I agree to pay within thirty days after Marshall, Missouri, shall have been selected as the location for said College by the said Educational Commission or persons authorized to locate the same. One-third in four months after said location, and balance in seven months after said location, with the privilege of giving note with good security for the last of such payments in one, two, or three years, with interest from the expiration of said seven months at the rate of 8 per cent interest, payable annually. The consideration of this obligation is such that the said trustees shall cause to be conveyed to me upon the payment of said sum of money by good and sufficient warranty deed as per classification hereinafter mentioned, in a tract of land known as the Haggin & Coyle tracts, lying adjacent to and south of the City of Marshall, Saline County, Mo., and being the south half of the southwest quarter of Section fourteen (14) and 100 acres off the north side of the northwest quarter

of Section twenty-three (23), all in Township fifty (50), Range twenty-one (21).

Which said tract of land is to be subdivided into five hundred and forty (540) lots with a tract of forty acres near the center of same for College site, and upon which said College is to be built, said lots to be classified and valued as follows:

Twenty-four extra No. 1 corner lots, valued at \$500.00 each. Fifty first class lots valued at \$400.00 each. One hundred second class lots valued at \$350.00 each. One hundred and fifty third class lots, valued at \$250.00 each. One hundred and twenty-six fourth class lots valued at \$150.00 each. Ninety fifth class lots, valued at \$50.00 each.

Each class of said lots to be distributed to the subscriber to that class of lot under the superintendence of the above named trustees, said distribution to be made upon the payment of the first installment herein provided for. This obligation to be void unless the City of Marshall be selected as the location for said College on or before the first day of September next.

Witness my hand and seal this day of 1888.

..... (Seal.)
 (Seal.)
 (Seal.)

EXHIBIT 'B.'

To P. H. Rea, P. C. Armentrout and D. D. Duggins:

We, the undersigned committee appointed to examine the list of subscribers and the list of persons to whom lots are sold for the benefit of the Cumberland Presbyterian College, aggregating in amount one hundred and one thousand, one hundred and fifty dollars (\$101,150.00), having made a careful examination of the same, believe that by reasonable diligence in the collection of the same, 95 per cent of the subscriptions will be realized in cash.

Respectfully submitted,

Jas. A Gordon,
 Cashier Farmers Savings Bank,
 J. T. Conway,
 Real Estate Agt.,
 J. C. Lamkin,
 Collector of Saline Co.,
 J. P. Huston,
 Cashier Wood & Huston Bank.
 A. S. Van Anglen,
 Cashier Bank of Saline,
 J. H. Cordell,
 Cordell & Dunnica, Bankers,
 I. O. Striker, Merchant."

14. DEED FROM JAMES A. GORDON, TRUSTEE TO MISSOURI VALLEY COLLEGE: Beginning with line 12, page 470 of said record, with the words, 'General Warranty Deed,' ending with line 8, page 473 thereof with the words, 'Recorder of Deeds,' and reading as follows:

"GENERAL WARRANTY DEED.

Know All men by these presents, that I, James A. Gordon, trustee, of the County of Saline, in the State of Missouri, have this day, for and in consideration of the sum of one dollar to the said James A. Gordon, trustee, in hand paid by Missouri Valley College, a corporation, of the County of Saline, in the State of Missouri, granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Missouri Valley College, the following described tracts or parcels of land situated in the County of Saline, in the State of Missouri, that is to say:

Beginning at the southeast corner of the intersection of College and Redman Avenue, running thence east of the south side of College Avenue aforesaid nine hundred and thirty (930) feet to Conway Avenue thirteen hundred and eighty feet (1,380) to Morrow Avenue; thence west along the north side of said Morrow Avenue nine hundred and thirty feet (930) to Redman Avenue; thence north along the east side of said Redman Avenue thirteen hundred and eighty feet (1,380) to the place of beginning, in College Addition to the City of Marshall, as surveyed and platted as shown by plat on file in Recorder's office of Saline County, Missouri, said tract being designated thereon as 'College Campus.'

The further consideration of this deed being the location establishing and maintaining a college upon said land so conveyed; and said land shall never be sold, conveyed, mortgaged or in any manner disposed of by the grantee herein; but shall forever be held for College or College ground purposes free from all deeds, debts of trust, mortgages, claims, liens, judgments and exactions suffered, given or created by the grantee herein, its trustees or agents.

To have and hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said Missouri Valley College forever.

I, the said James A. Gordon, trustee, hereby covenanting to and with the said Missouri Valley College as trustee, myself my heirs, executors and administrators, to warrant and defend the title to the premise hereby conveyed against the claim of every person whatsoever

In witness whereof, I have hereunto subscribed my name and affixed my seal this 10th day of September, 1888.

Jas. A. Gordon, Trustee.

State of Missouri, County of Saline, ss.

On this 17th day of September, 1888, before me personally appeared James A. Gordon, trustee, to me known to be the person described in and who executed the foregoing instrument, and acknowledged the same as his free act and deed, as trustee.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Marshall, Mo., the day and year first above written. My term of office as a notary public will expire September 23rd, 1891.

I. N. Sergeant,
Notary Public.

(Seal)

State of Missouri, County of Saline, ss.

I, M. C. Sandidge, Recorder of Deeds in and for said county, do hereby certify that the above and foregoing deed, with the certificate of acknowledgement of James A. Gordon, trustee, thereon endorsed, was filed for record in this office on the 22nd day of January, 1889, at the hour of 9:45 o'clock a. m., and has been duly recorded in Book No. 61, page 168.

Witness my hand and official seal in office this 22nd day of January, 1889.

M. C. Sandidge,
Recorder of Deeds.

(Seal)

State of Missouri, County of Saline—ss.

I, A. T. Swisher, Recorder of Deeds within and for the county and state aforesaid, hereby certify that the above and foregoing is a full, true and correct copy of warranty deed from James A. Gordon, trustee, to Missouri Valley College, as the same appears of record in my office in Book No. 61, at page 168.

In witness whereof, I have hereunto set my hand and affixed my official seal at office in Marshall, Mo., this 21st day of June, 1910.

A. T. Swisher,
Recorder of Deeds."

15. DEED FROM JAMES A. GORDON, TRUSTEE TO MISSOURI VALLEY COLLEGE; Beginning with line 26, page 473, of said record, with the words, 'Know All men by these presents,' ending with line 21, page 476 thereof, with the word, 'Seal,' and reading as follows:

"Know all men by these presents, that I, James A. Gordon, trustee, of the County of Saline, in the State of Missouri, have this day, for and in consideration of the sum of one dollar, to the said James A. Gordon, trustee, in hand paid by Missouri Valley College, a corporation of the County of Saline, in the State of Missouri, granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Missouri Valley College, the following described tracts of land situated in the County of Saline, in the State of Missouri, that is to say:

Beginning at the southeast corner of the intersection of College and Redman Avenue and running thence east on the south side of College Avenue aforesaid nine hundred thirty (930) feet to Conway Avenue, thence south along the west side of said Conway Avenue thirteen hundred and eighty feet (1,380) to Morrow

Avenue; thence west along the North side of said Morrow Avenue; thence north along the east side of said Redman Avenue thirteen hundred and eighty feet (1,380) to place of beginning in College Addition to the City of Marshall as surveyed and platted as shown by plat on file in Recorder's office of Saline County, Missouri, said tract being designated thereon as College campus.

The further consideration of this deed being the locating, establishing and maintaining a college upon said land so conveyed, and said land shall never be sold, conveyed, mortgaged or in any manner disposed of by the grantee herein, but shall forever be held for College and College ground purposes free from all deeds, deeds of trust mortgages, claims, liens, judgments and exactions suffered, given or created by the grantee herein, its trustees or agents

To have and to hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereto belonging or in any wise appertaining unto the said Missouri Valley College forever, the said James A. Gordon, trustee, hereby covenanting to and with the said Missouri Valley College, for myself, my heirs, executors and administrators, as trustees, to warrant and defend the title to the premises hereby conveyed against the claim of every person whatsoever.

In witness whereof, I have hereunto subscribed my name and affixed my seal this 10th day of September, 1888.

(Seal)

Jas. A. Gordon, Trustee.

State of Missouri, County of Saline, ss.

On this 17th day of September, 1888, before me personally appeared James A. Gordon, trustee, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as trustee.

In testimony whereof, I hereunto set my hand and affix my official seal, at my office in Marshall, Mo., the day and year first above written.

My term of office as a notary public will expire September 23rd, 1891.

I. N. Seargeant, Notary Public.

State of Missouri, County of Saline, ss.

I, M. C. Sandidge, Recorder of Deeds in and for said county, do hereby certify that the above and foregoing deed, with the certificate of acknowledgment of James A. Gordon, trustee, thereon indorsed, was filed for record in this office on the 22nd day of January, 1889, at the hour of 9:45 o'clock A. M. and has been duly recorded in Book No. 61, page 168.

Witness my hand and official seal in office this 22nd day of January, 1889.

M. C. Sandidge,
Recorder of Saline County.

State of Missouri, County of Saline, ss.

I, A. T. Swisher, Recorder of Deeds within and for the county and state aforesaid, hereby certify that the foregoing is a true and correct copy of warranty deed from James A. Gordon, trustee, to Missouri Valley College as the same appears of record in my office in Deed Record No. 61, page 168.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 5th day of November, 1909.

A. T. Swisher,

Recorder of Deeds for Saline County, Mo.

By J. B. Jester, D. R. (Seal)."

IV.

The plaintiffs now offer the following evidence under paragraph 2 of stipulation No. 2.

a. FROM THE CUMBERLAND PRESBYTERIAN DIGEST BY J. B. STEPHENS.

1. EXCERPT FROM THE CIRCULAR LETTER OF 1810: Beginning with line 30, page 16 of this Exhibit with the words, 'This step,' ending with line 37, page 16 thereof, with the words 'body or not,' and reading as follows:

"This step (that is, the formation of a separate Presbytery) at first view, may alarm some of you. But be assured, brethren, that, although we are not now united to the Presbyterian Church by the external bond of discipline, we feel as much union in heart as formerly, and we would further assure you that we have not set up as a party inimical to the general Presbyterian Church; no, we ourselves are Presbyterians and expect ever to remain such, whether united to the general body or not."

2. REPORT OF COMMITTEE ON CONFESSION OF FAITH, 1882: Beginning with line 33, page 27, of said Exhibit, with the words, 'Mindful of the fact,' ending with line 37, page 27 thereof with the words, 'its logical correlates,' and reading as follows:

"Mindful of the fact that the Committees were appointed not to make a new Confession, but to revise the old one, we have studied not to transcend our authority, and we have no hesitation in saying that we have not changed a single doctrine fundamental to your scheme of theology, or any of its logical correlates."

3. CONTROL OF PROPERTY OF LOCAL CONGREGATION BY GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH: Beginning with line 31, page 53, of said Exhibit, with the words, 'The undersigned,' ending with line 24, page 54 thereof, with the word, 'Adopted,' and reading as follows:

"The undersigned, members of Ohio Synod, have positive information that, owing to dissensions in the Waterford congregation of the Cumberland Presbyterian Church, at Beverly, Ohio, in the bounds of Muskingum Presbytery, and owing to the failure of said Presbytery to meet on its own adjournment, and to the improbability of its being able to call a quorum important church interests in said congregation are jeopardized, there being an effort by a faction of said congregation to withhold the church property from the use and control of Cumberland Presbyterians, and to transfer it to the Presbyterian Church.

Therefore, we respectfully memorialize your Reverend Body to recognize that portion of said Waterford congregation represented by David Thompson, Allen Nickerson, and Thomas Clark, ruling elders, and H. S. Clark, J. T. Palmer, and Samuel Leget, trustees, as the identical Cumberland Presbyterian Church, of Waterford, and that as such they are entitled to hold the church property, at Beverly, belonging to the Cumberland Presbyterian Church.

Thomas Thomas,
Ovid Lutz,
H. D. Onyett.

Your Committee recommend that said memorial be granted, and that the organization represented be David Thompson, Allen Nickerson, and Thomas Clark, ruling elders, and H. S. Clark, J. T. Palmer and Samuel Leget, trustees, mentioned in said memorial, be and is hereby recognized by this General Assembly as the true and legitimate Waterford congregation of the Cumberland Presbyterian Church at Beverly, Ohio, and entitled to hold all the church property hitherto owned and held in law by said Waterford congregation, at Beverly, Ohio. Adopted" (1872, p. 28).

4. THE APPEAL OF REV. R. R. CROCKETT: Beginning with line 35, page 378, of said Exhibit, with the words, 'The Committee on Judiciary,' ending with line 4, page 380, thereof, with the word, 'Adopted,' and reading as follows:

"The Committee on Judiciary have considered the appeal of Rev. R. R. Crockett from the action of Texas Synod.

It appears that for some years Larissa Church, under the care of Trinity Presbytery, had two places of worship, one at Larissa in a church house belonging to said church, and the other at Mt. Selman in a school house. After a while the church Session attempted to remove the church to Mt. Selman, and, as it is claimed, did so by consent; the church house at Larissa was sold and the records and books and other property transferred to Mt. Selman, where the congregation continued to worship under the name of Larissa Church.

Some disaffection growing up, the question was carried to the Presbytery and it decided that Larissa congregation did not then exist at Larissa, and the name was subsequently changed to Mt. Selman. In the meantime about twenty of the members withdrew by letter and joined the Alpine Church, in the neighborhood. Mat-

ters thus remained until the meeting of the Presbytery, July, 1891, when an order was made permitting the members of Alpine Congregation who had formerly belonged to Larissa Church to withdraw, and 're-establish' themselves as a congregation at Larissa under the name of Larissa Church.

This having been done, the question arose as to whether the Larissa organization was entitled to the day of worship, one Sunday in the month, formerly used by the Larissa Church, and to a part of the property turned over to the church at Mt. Selman. The question being considered by the Presbytery it decided that the Larissa organization was entitled to the day of worship, the church records, and one-half in value, of the property turned over to the Mt. Selman organization.

From this action an appeal was taken to the Synod and the appeal not having been properly prosecuted was dismissed or not considered. The Synod, however, did take jurisdiction under the power of review, and in reviewing the minutes of the Presbytery the Synodical Committee recommended that the action of the Presbytery be reversed.

Upon consideration of this report in the Synod, an amendment to the report having been offered sustaining the action of the Presbytery, 'a motion prevailed to table the report indefinitely,' as is stated in the record. The substance of this action was to postpone indefinitely the report and thus sustain and leave in force the action of the Presbytery of which complaint is made.

From this action of the Synod an appeal is prosecuted to the General Assembly. Was the action of the Presbytery thus left in force right and proper under the circumstances?

We are of opinion that upon withdrawing from the Larissa Church at Mt. Selman, the removal to that point having been approved by the Presbytery, the members lost all rights as members of the Larissa Church whether the same is to be considered as located at that time at Larissa or Mt. Selman. That having thus lost their rights, the subsequent action of Presbytery authorizing them to reestablish themselves as a church at Larissa could not and did not restore any of the rights thus lost as against those who had secured vested rights in the property, etc., in question.

Therefore, that the action of the Presbytery giving them the day of worship, the church records, and one-half in value of the property was erroneous and should have been reversed and set aside by the Synod, and that it was an error in the Synod not to have done so, and hence we recommend that the appeal be sustained and that the action of Presbytery be set aside. 'Adopted.' 1893, p. 32."

b. FROM THE DIGEST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES BY ALEXANDER.

The plaintiffs offer no documents from this Exhibit.

c. FROM THE DIGEST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, By Moore.

The plaintiffs offer no documents from this Exhibit.

d. FROM THE DIGEST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, By Roberts.

The plaintiffs offer no documents from this Exhibit.

V.

The plaintiffs now offer the following evidence under paragraph 3, of stipulation No. 2.

1. FROM THE MINUTES OF NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, at Arrow Rock, Oct. 9 to 11, 1894, page 18, which reads as follows:

"Your Committee on overtures have carefully considered the nature of the communication and request from Arrow Rock congregation, and recommend that their request be granted, and that said congregation be recognized as dissolved, and the name of Arrow Rock as retired from the Presbyterial roll of churches.

We also recommend that the grounds, the church building and its furniture, as enumerated in said communication, and tendered to this Presbytery, to be disposed of as the Presbytery may consider best, be accepted, and that a committee composed of C. M. Sutherlin, Thos. J. Davis, E. G. Wheeler, E. Ancel, and Phil Goetz, be appointed to take charge of said Arrow Rock church property and dispose of same as they may deem best for the glory of God, and the interest of His cause in the bounds of New Lebanon Presbytery, and that they report their action to the next meeting of the Presbytery. H. D. Kennedy, John H. Windsor, J. M. Bente."

2. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, at Arrow Rock, March 30 to April 3, 1894, page 3, which reads as follows:

"A communication from Capt. C. M. Sutherlin, in relation to church property at Arrow Rock, was referred to the Committee on Missions."

3. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, March 30 to April 3, 1894, page 15, which reads as follows:

"Report No. 2 on Missions: 'Your committee recommend that the Presbytery appoint a committee or committees, to sell the churches at Worm Rock and Concord, and that they proceed to do so at once. The proceeds to be sent to the treasurer of the committee on Missions, W. H. H. Stephens, of Bunceton, Mo.' " "There seems to be no chance to reorganize the churches at these places and the money invested should be used elsewhere. B. Margeson, John H. Windsor, E. E. Morris, H. D. Kennedy, W. F. Johnston."

"On the sale of Arrow Rock Church property, E. E. Morris, H. R. Crockett and L. M. Morrow."

4. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, October, 1900, page 5, which reads as follows:

"A communication from the Committee appointed to sell the Arrow Rock Church property, reported they had effected the sale, and the proceeds—\$578—were deposited in the Bank of Marshall subject to the order of the Presbytery; and the Presbyterial Treasurer was directed to instruct the cashier of said Bank to transfer said deposited amount to the credit of the Missouri Valley College Endowment Fund."

5. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, March, 1894, page 8, BOONVILLE CHURCH, which reads as follows:

"With reference to the Boonville mission, we recommend that you appoint a special committee, consisting of W. F. Johnston, W. H. H. Stephens, and J. H. Windsor, to take charge of the interests of said mission and its properties, and to sell or make such other disposition of said interests as they may decide to be best; and that said committee, out of the resources of said property, pay Rev. W. H. Shaw any balance due him for services as Presbyterial missionary. B. Margeson, O. Guthrie, Alonzo Pearson, W. H. H. Stephens."

6. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, SAME MATTER, 1894, page 6, and page 18, which reads as follows:

"The Special Committee appointed to take charge of our property interest in Boonville, submitted the following report, which was adopted, and accounts ordered paid, except the Wabash Furniture Co's."

"Your Committee, appointed at the spring session, to take charge of the property interests of the Boonville, Missouri, report as follows:

Two of the Committee met in Boonville, on Saturday, April 7, 1894 (Bro. Windsor being absent), and had a conference with Mr. S. H. Stephens in regard to his understanding of the contract between Bro. Campbell and himself. Without coming to any agreement, the Committee adjourned till Monday, April 9th, at 10 o'clock A. M.

At that time the full Committee met Mr. Stephens, and found that he claimed, under his contract with Bro. Campbell, the church with all the furniture and fixtures, and that the Committee owed him \$50 besides.

After a conference of several hours, and several propositions submitted by both parties, and rejected, we came to the following

understanding: That Mr. Stephens take the church and all furniture, except the pews and organ, and the Committee pay him \$100 within two months.

On May 12th, the Committee sold to Rev. L. F. Clemens the pews, for \$150, and paid Mr. Stephens the \$100.00. We found there was a debt of \$6.75 on the organ, which was paid by order of the Committee.

Your Committee have realized \$150 from sale of pews, and paid out \$108.75; balance \$41.25. The organ we have not as yet disposed of.

Your Committee learned, about the first of August, that the Wabash Furniture Co. claimed that there was due them, on the pews, about \$27.00. Also the Boonville Gas Co. has a bill of about \$14; and Stahl & Stahl a bill for about \$4 for printing.

The above accounts we respectfully refer to your body for further instruction. Respectfully submitted, W. F. Johnston, J. H. Windsor, W. H. H. Stephens."

"On motion, the Boonville congregation was dissolved, and the name dropped from the Presbyterian roll of churches."

7. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, 1894, page 18, Jamestown Church, which reads as follows:

"Whereas, There is a Cumberland Presbyterian Church in the Town of Jamestown, Moniteau County, in the bounds of this Presbytery; and whereas, said Church has not had the services of one of your preachers for several years, and is now in a disorganized condition—many of the members having gone to other communions—and the said church property being used by other denominations for worship and the upbuilding of their own interest; therefore,

Resolved, That a committee, composed of Rev. L. F. Clemens, and Elders W. F. Johnston and A. N. George, be appointed to look after the spiritual and property interests of said Jamestown congregation, and take such steps to protect the interests of your Presbytery in that town as they may deem best.

Resolved, That the same Committee above named be also directed to inquire into the condition of New Hope congregation, a few miles from Jamestown, and report to the next meeting of your Presbytery. H. D. Kennedy."

8. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, April, 1895, pages 11 and 14: AURORA SPRINGS CHURCH PROPERTY, which reads as follows:

"We also recommend that, as the town of Aurora Springs has gone into hopeless decline, and as the former membership of our church at that place has ceased to exist, that the name of Aurora Springs be dropped from your list of churches, and that a committee be appointed to look after valuable church property interests at Aurora Springs and consider the prudence and feasibility of mov-

ing the church house to Eldon, a flourishing railroad station, one and a half miles distant, and the organization of a congregation at that place."

"H. D. Kennedy was appointed to look after the church property at Aurora Springs, as provided for in report above."

9. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, March, 1900, page 15, NEW FRANKFORT CHURCH PROPERTY, which reads as follows:

"J. B. Sterrett, E. G. Wheeler and A. Olson were appointed a committee to dispose of a half interest in church property located at New Frankfort."

10. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, OCTOBER, 1900, pages 14 and 15 thereof, which reads as follows:

"E. G. Wheeler and J. B. Sterrett, appointed at last Presbytery to dispose of our property rights in a church at New Frankfort, submitted the following which was approved:

To the Members of New Lebanon Presbytery:

We, the undersigned, your Committee, appointed to sell the interest of the Cumberland Presbyterian Church in a church building at New Frankfort, in Saline County, Missouri, beg leave to make the following report, to-wit:

We have examined the records of Saline County to ascertain the title to said church property, and find that the trustees of said church at New Frankfort conveyed the fee simple title to the property to the trustee of the German Presbyterian Church, of the Presbyterian Church of America, in the spring of 1872.

That a short time thereafter this Presbytery appointed a Commission, composed of P. G. Rea, W. E. Burke and James Martin, to adjust a difference which seemed to exist, as to the right of the Cumberland Presbyterian denomination to the said property.

That said commission entered into an agreement with the trustees of said German Presbyterian Church, by the terms of which the Cumberland Presbyterians were to have the right to the use of the church building one-half of the time, until such time that the German Presbyterians may deem it advisable to use and occupy it all the time. At which time it was agreed that commissioners should be appointed to agree upon the amount to be paid.

Your Committee understands that the trustees of the German Presbyterian Church have since conveyed the property to the trustees of the German Evangelical Church, of which the said trustees are now members.

Your Committee have interviewed the trustees of the German Evangelical Church with a view of selling them our interest in the property, and they have refused to pay anything for it.

Your Committee are of the opinion, and so recommend, that it would be advisable for New Lebanon Presbytery to abandon its interest in this property rather than enter into any litigation over the same, inasmuch as the property has been, and is now being used for a house of public worship.

In our opinion the whole property is now worth from \$400 to \$500, being only in a fair state of repair.

We herewith submit our report with a copy of the contract herein referred to, and having reported fully, and done all that we think we can in the premises, we ask to be discharged. Respectfully submitted, E. G. Wheeler, J. B. Sterrett."

11. FROM THE MINUTES OF THE NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, 1895, page 15, CONCORD CHURCH PROPERTY, which reads as follows:

"Your committee recommend that the Presbytery appoint a committee or committees, to sell the churches at Worm Rock and Concord, and that they proceed to do so at once. The proceeds to be sent to the treasurer of the committee on Missions, W. H. H. Stephens of Bunceton, Mo.

"There seems to be no chance to recognize the churches at these places and the money invested should be used elsewhere. B. Margeson, John H. Windsor, E. E. Morris, H. D. Kennedy, W. F. Johnston."

"On the sale of the Concord Church property Thos. Penick, J. E. F. Robertson and T. H. B. Street."

12. FROM THE MINUTES OF NEW LEBANON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, January, March and April, 1898, from pages 3 and 4, REV. S. D. LOGAN RESIGNATION FROM SEDALIA CHURCH:

"Dear Brother: In accordance with a regular petition, you are hereby notified that New Lebanon Presbytery will meet in called session in Sedalia, Mo., March 18, 7:30 p. m., for the purpose of consulting with the Session and Congregation at Sedalia, with reference to the resignation of Rev. S. D. Logan, their pastoral supply, whose resignation is now in the hands of the Sedalia Session. S. D. Logan, Moderator."

"Resolved, that it is the sense of this Presbytery that the relation existing between Rev. S. D. Logan and the Sedalia congregation of the C. P. Church should be continued and that it would be exceedingly hazardous to the best interest of said congregation for the relation to be dissolved. E. E. Morris."

"Resolved, that this Presbytery instruct the Clerk of said Presbytery to send a copy of resolution to Clerk of Session at Punxsutawney, Penn., asking that they await developments of Sedalia church in regard to Bro. Logan's resignation."

13. MINUTES OF LEXINGTON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, April, 1887, pages 5 and 6, WELLINGTON CHURCH BELL CASE, which reads as follows:

"The Board of Trustees of the Wellington Congregation of the C. P. Church had a called meeting at Charles A. Thomas's on Saturday, March 26th, 1887, to take into consideration what would be best with reference to the church bell that was presented to the Wellington Congregation by the late Peter Wolf, Esq., of that place. Members of the Board present: A. A. Moore, C. A. Thomas and William Lauderdale. A. A. Moore was called to the chair.

After due deliberation the following was agreed on:

First: That, as the bell was given to promote religion in connection with the Cumberland Presbyterian Church, and, whereas that by deaths and removals, the Congregation at that place is so broken up that there are no religious services carried on there at this time, and that it is not likely that the bell will be needed there for the purpose that was in the mind of the donor, therefore be it

Resolved; That it be offered to Lexington Presbytery, under whose care said Congregation is; and direct to sell it to the best advantage, and loan the money out as a permanent fund, only using the interest, and that for missionary purposes in the bounds of Lexington Presbytery. The original price at St. Louis was \$165.00, and we think it ought to bring \$100.00. The Board prefer that the Congregation at Odessa should have it, as they were instrumental in removing it from Wellington. A. A. Moore, Chairman."

14. FROM MINUTES OF SAME PRESBYTERY, MARCH, 1888, page 6, SAME MATTER, which reads as follows:

"The following report was concurred in, and recommendations adopted:

'The undersigned, a committee appointed by Presbytery to make sale of a church bell, presented by the Trustees of Wellington congregation, the proceeds to be applied to missionary purposes, Odessa congregation having the refusal of said bell, would report that said congregation refuse to give more than \$50.00 for said bell. It is for you to say whether or not it should be sold for that amount. A. A. Moore.'

And, thereupon, the said committee was ordered to sell said bell to Odessa congregation for the said sum of \$50.00."

15. MINUTES OF SAME PRESBYTERY, 1887, SEPTEMBER, pages 16 and 17, which reads as follows:

"Your Committee on Overtures report that they have had before them a petition from a congregation formed out of the Mt. Carmel and Dayton congregation, taking the name of Garden City congregation, and submit the following thereon: Whereas, the Garden City congregation, now praying to be taken under the care of this Presbytery, is really the union of Mt. Carmel and

Dayton congregations of this Presbytery; Therefore, resolved that *we hereby unite the said Mt. Carmel and Dayton congregations into one congregation, whose name shall be Garden City, and whose center of worship shall be Garden City; giving to the united congregation any property that may belong to either Mt. Carmel or Dayton congregations, making the past record of each of these congregations a part of the record of the Garden City congregation, and hereby instruct the clerk of Garden City session to secure and preserve the records of Mt. Carmel congregations, being the history of these congregations; also, instructs the Trustees of the Dayton congregation to transfer the property held by them for the Dayton congregation to the trustees of the Garden City Congregation.*

We also recommend that the name of the Garden City congregation be enrolled among the congregations of the Presbytery. Z. H. C. Mock, B. P. Fullerton, T. S. Staver."

16. ROSE HILL.

SAME MINUTES, APRIL 1890, p. 26, reading as follows: "We recommend that the amount of \$35.45 now in the hands of the Treasurer, derived from the sale of Rose Hill church house in 1876, be turned over to the Rose Hill congregation."

17. RICH HILL PROPERTY.

SAME MINUTES OCTOBER, 1901, pages 7 and 10, reading as follows:

"Your Board of Trustees beg leave to submit its annual report.

The Board has sold the Rich Hill lot for two hundred and fifty dollars, and the President executed a deed for same which was mailed to your Stated Clerk to be delivered by him on payment of the consideration."

"2. The Rich Hill property has been sold for the neat sum of \$237.50 which will be turned over to Nevada according to your previous order."

"The Board held its annual meeting in Kansas City, Mo., September 28, 1901, at which time the sale of the Rich Hill church lot was confirmed and the action of the President (Henry C. Harper) in executing a deed to the same was approved."

17. NEVADA LOT.

SAME MINUTES, OCTOBER, 1901, PAGES 7 AND 10, reading as follows:

"Your Board of Trustees beg leave to submit its annual report.

Since the last report the Board has received the sum of seven hundred and fifty dollars as proceeds of the sale of the Nevada lot, and that amount was paid to your missionary committee on your order for investment for Nevada Missions."

"2. The Rich Hill property has been sold for the net sum of \$237.50 which will be turned over to Nevada according to your previous order."

18. MARY F. VIOLET BEQUEST.

MINUTES, OCTOBER, 1901, p. 5, reading as follows:

"Bequest—the following report was presented and adopted, viz: To Lexington Presbytery, in session October 2, A. D., 1901.

It is our pleasure to report that we have received the sum of \$100.00 in cash, and that said sum is the property of the Presbytery. It represents the last earthly offering of Sister Mary F. Violet, to the Lord's cause. She died January 4th, 1898, after long months of the most intense suffering, but in the midst of it she rejoiced in the presence of the Christ. She loved her church devoutly, and desired that it should share in her small estate. Clause No. 4 of her will indicates the purpose for which the bequest was made, as well as the method for directing the same. It is as follows, viz:

'I give and bequeath to the Lexington Presbytery of the Cumberland Presbyterian Church the sum of \$100.00 dollars to be disposed of for Church Election, or Educational purposes as Rev. S. F. King and Rev. Frank Russell may direct, they being appointed as Trustees to take charge of, and dispose of said funds.'

In view of the authority vested in us, we direct that the said sum of \$100.00 be placed in the hands of the treasurer of the Presbyterial Board of Trustees, and kept by him as a permanent Educational fund, the interest only being used as the Presbytery may direct. Respectfully, S. Finis King, Frank Russell, Trustees."

19. SOPHIA LAUDERDALE BEQUEST.

SAME MINUTES, APRIL, 1896, p. 15.

"The following report was adopted:

"Odessa, Mo., March 31, 1896.—To the Lexington Presbytery of the Cumberland Presbyterian Church in Session at Montrose, Mo. Brethren: Having been appointed your agent for the purpose of collecting two hundred and fifty dollars willed to Lexington Presbytery by Sister Sophia Lauderdale, I report the same collected and now in my hands subject to your order. J. C. Cobb, Agent.

Having considered the above report, we recommend for your adoption the following:

Whereas, Mrs. Sophia Lauderdale, a devoted member of the Cumberland Presbyterian Church from her youth, has passed away, and

Whereas, By her last will she left to the Lexington Presbytery the sum of \$250 to be used where it might think best, therefore, be it

Resolved, first, That said \$250 be turned over to your Presbyterial Board of Trustees, to be known as the Sophia Lauderdale educational fund, the interest only of which is to be used in aiding the probationers for the ministry under the care of the Lexington Presbytery.

Second. That we express our thanks to God for this gift, and to each of her heirs for seeing that her will has been so promptly executed in regard to this will."

20. BOONVILLE, COOPER COUNTY, MO.:

"THE CHURCH EXTENSION ASSOCIATION OF THE SYNOD OF MISSOURI, OF THE CUMBERLAND PRESBYTERIAN CHURCH," PAGE 21, reading as follows:

"Adoption by the Association under consideration. Investigation pending. Membership numbers about 30. Property purchased by the Congregation in 1893 for \$1,500.00; repairs, \$603.75; or, \$2,103.75. Paid on purchase, \$50.00; on repairs, \$550.00; present debt, \$1,503.75 and interest; cash on hand, \$11.50; good subscriptions, \$100.00. Foreclosure feared."

21. QUARTERLY BULLETIN OF THE PRESBYTERY OF KANSAS CITY SYNOD OF MISSOURI PRESBYTERIAN CHURCH IN THE U. S. A. PAGE 4. BULLETIN NUMBER ONE, OCTOBER, 1909.

"The Stated Clerk read copies of the citations addressed to the Session of the Fifth Presbyterian Church, Kansas City, and to the Rev. J. L. McKee, as ordered by Presbytery at its last meeting (See printed Minutes, page 30, next to last report); whereupon the Chairman of the Committee on Ministerial Claims reported the receipt of a communication from Mrs. McKee, stating that all claims had been satisfactorily adjusted between the two parties. Elder Milton Schwind and Treasurer H. R. Ennis were heard in behalf of the church, stating that, although there was a question as to the exact amount due to Dr. McKee in full settlement of his claim for salary, the congregation was at all times ready to make settlement and full payment of the salary; that at the April meeting of the Presbytery, the representatives of the church were not present until after the action recorded on page 30 of the printed Minutes had been taken; and that, on that same day, they made to Dr. McKee a cash payment, which, by their books, settled the account. This answer of the church in the citation was deemed satisfactory."

22. SAME BULLETIN, PAGE 26, reading as follows:

"The Special Committee on *Church property* appointed at the last stated meeting made a verbal report, through Elder G. M. Johnston. The Committee was continued."

23. MINUTES OF THE KIRKSVILLE PRESBYTERY OF THE PRESBYTERIAN CHURCH, U. S. A., HELD WITH GRANGER CHURCH, GRANGER, SCOTLAND COUNTY. MARCH 26 TO 28, 1907.

HOPEWELL CHURCH. Page 3, reading as follows:

"3. The Chairman of the committee to whom the matter pertaining to the Hopewell church was committed, reported to your stated clerk, that they had sold the old church house for \$30.00 and the said amount was turned over to the treasurer. Respectfully submitted. W. H. Johnston, Stated Clerk."

24. SAME MINUTES, page 10, same matter, reading as follows:

"Whereas, there exist conditions in a few of our congregations which require the aid, counsel and assistance of the Presbytery. And whereas, no representatives are present from some of these congregations; therefore Resolved, (1) That the committee on Pastorates and Supplies be authorized to look after such congregations; and where they think it advisable that they be authorized to send a man into such congregation as pastor at large to advise with and where possible harmonize the members.

(2) That *this committee be clothed with presbyterial authority* and that they are authorized to instruct the pastor at large to take such steps as will remove impediments in the way of progress and when necessary to use presbyterial authority *in affecting complete organization for church work.*

(3) That the committee and such pastor at large have the assurance that we as a Presbytery will stand by and sustain them in their efforts to accomplish results that will honor God and help the church in its work."

25. MINUTES OF SPECIAL AND STATED MEETINGS OF KIRKSVILLE PRESBYTERY OF THE PRESBYTERIAN CHURCH, U. S. A., June 1 and September 21-23, 1909. Page 3, reading as follows:

"The Church at *Millard* asked the advice to Presbytery as to whether the use of their church house should be tendered to the Universalists. The answer of the Presbytery was No."

26. SAME MINUTES, page 10, reading as follows:

"1. We recommend that the petition of the Trenton Church for transfer to the Presbytery of St. Joseph be referred to Synod."

27. SAME MINUTES, page 22, reading as follows:

"(4) Commission to visit *Boynton Church*"

28. MINUTES OF MCGEE PRESBYTERY OF THE PRESBYTERIAN CHURCH, U. S. A., HELD AT MOBERLY, MISSOURI, MARCH 26-27, 1907. PAGE 5, reading as follows:

"Elder Frank Smith (of the *Macon Church*) presented a formal request from the Macon congregation, dated September 16th, 1906, asking that the First Presbyterian Church of Macon be dismissed to the McGee Presbytery in connection with the Presbyterian Church U. S. A., with a view of uniting the two churches, the Cumberland Presbyterian and the First Presbyterian churches into one organization."

"The request was granted and the First Presbyterian Church of Macon was dismissed to McGee Presbytery U. S. A. S. S. McLaughlin, Stated Clerk, Hannibal Presbytery."

"The First Presbyterian Church of Macon, Missouri, through its representative, Samuel J. Wilson, presented its overture to be received into this Presbytery in accordance with the action of Hannibal Presbytery and on motion said congregation was received under the care of the Presbytery and Mr. Samuel J. Wilson was

enrolled and took his seat as representative of said congregation in Presbytery."

"The following memorial from the Macon Presbyterian Church of Macon, Missouri, formerly Cumberland Presbyterian, and from the First Presbyterian Church of Macon, Missouri, together with the terms and conditions of a basis of union between the said two congregations were presented in words and figures as follows, to-wit:

'Macon, Mo., December 26, 1906.

To McGee Presbytery in session at Macon, Missouri, December 28, 1906. *Greeting:*

'The undersigned, constituting respectively the sessions of the First Presbyterian Church of Macon, and Macon congregation of the Presbyterian Church (formerly C. P.), would hereby represent and show

'That the said congregations had on the 2nd day of December, 1906, several congregational meetings and at such meetings did respectively adopt the articles of merger thereinbefore adopted by their respective sessions and recommended to their said respective congregations.

'That the undersigned also further show that the minutes of the action of said congregational meetings are hereunto attached and made a part of this memorial.

'Wherefore, these memorialists ask the Presbytery to pass an order consolidating the two congregations into one, according to the said articles of merger found in the copies of the said minutes. And your memorialists shall every pray, etc.

Geo. M. Houser,

Ben Eli Guthrie, Clerk,

R. S. Matthews,

Elders Macon congregation

Presbyterian Church (formerly

C. B.),

Elders First Presbyterian Church.' "

Samuel J. Wilson,

Franklin Smith,

Phillip Gansz,

A. F. Mirrilees,

29. SAME MINUTES, page 9, reading as follows:

"Thereupon said memorial and the articles of union thereto attached were duly considered and on motion the said memorial was accepted and the terms of union of said congregation were approved and it was ordered that the said first Presbyterian Church of Macon, Missouri, and the said Macon Presbyterian Church of Macon, Missouri (formerly C. P.), be and the same are hereby consolidated and united and are and shall be and constitute one congregation *to be known as the* Macon congregation of McGee Presbytery of the Presbyterian Church, U. S. A., and as such church and congregation are entitled to all the rights, privileges and immunities and appurtenances *as well as all the property, real, personal and mixed*, that either or both of the said congregations heretofore had and enjoyed.' "

30. SAME MINUTES, page 11, reading as follows:

"Resolved, That when this Presbytery adjourns, it adjourns to meet with Grand Prairie Church at 7:30 p. m., on the 20th day of August, 1907, unless in the meantime the General Assembly or the Synod of Missouri shall order otherwise; and in case of any such order by either the Assembly or the Synod or the officers, *members and congregations* of this Presbytery are *hereby ordered and directed to obey the same and to report to, attend or be represented at such Presbytery as may be indicated and directed in such order when and where therein appointed.*"

31. MINUTES OF THE LEXINGTON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH HELD MARCH 28-30, 1905, AT CLINTON, HENRY CO., MO. Page 5, reading as follows:

"Ministers J. H. Tharp and J. C. Worley, and Ruling Elders T. M. Casey and J. C. Cobb were elected as principal Commissioners to the General Assembly, and Ministers J. H. Norman and S. R. Shull and Ruling Elders M. G. Wood and A. H. Culver were elected alternates."

"Resolution. The following resolution was offered by Rev. J. W. McGee, Resolved, that our commissioners to the General Assembly be instructed to use their best endeavor to bring about a harmonious settlement of the Union question and abide by the result."

32. SAME MINUTES, page 13, reading as follows:

"We recommend:

1. That the name of *Dayton be* stricken from our roll of congregations and that Rev. J. W. McGee *visit* them and give the members *letters.*"

33. MINUTES OF THE 148 SESSION OF THE LEXINGTON PRESBYTERY OF THE PRESBYTERIAN CHURCH, U. S. A. (FORMERLY CUMBERLAND PRESBYTERIAN) HELD MARCH 26 TO 28, 1907. PAGE 1, reading as follows:

"The following request of the Mellier Place, Kansas City, Mo., congregation was granted and the congregation dismissed to the Presbytery of Kansas City:

To the Presbyteries of *Lexington* and *Kansas City*, Presbyterian Church in the United States of America:

Dear Brethren: In anticipation of the re-organization of the Presbyteries of the Synod of Missouri which will ultimately place the Presbyterian and Cumberland Presbyterian Churches of this city under the same jurisdiction, and in view of the local conditions which seem to make it advisable, the congregation of the Mellier Place Presbyterian Church, duly assembled on call of its Session, voted on October 14th, 1906, to endorse the request hereby made that the Presbytery of Lexington, at its meeting held in Louisiana, Mo., during the sessions of the Synod, transfer the Mellier Place

Presbyterian Church (formerly Cumberland Presbyterian), including its *entire membership and property*, to the care of the Presbytery of Kansas City; and the further request that the Presbytery of Kansas City receive and enroll said Church at its meeting held during the Session of Synod at St. Louis, Mo. On behalf of the congregation. Ed. Cadman, Clerk of Session. Kansas City, Mo., Oct. 14th, 1906."

34. SAME MINUTES, page 5, reading as follows:

"1. To receive the First Presbyterian Church of Clinton, Mo., under the care of the Lexington Presbytery and then to unite the same with the Cumberland Presbyterian Church of Clinton, Mo. And to unite any other Churches in the bonds of the Presbytery where it is requested and deemed advisable."

35. SAME MINUTES, page 5, reading as follows:

"New Church. Official notice was brought to the Presbytery that the *Kansas City Presbytery* had dismissed the First Presbyterian Church of Clinton, Mo., to the Lexington Presbytery and on motion said Church was received under the care of the Presbytery and placed on our roll.

Petitions, in regular order, were presented from both of the Churches of Clinton, asking that they be united, and on motion they were united upon the basis of union presented, which is as follows:

I. This congregation shall be known as the First Presbyterian Church of Clinton, Mo.

II. It shall be connected with the Presbytery of Lexington, belonging to the Presbyterian Church, U. S. A.

III. It shall be the full legal and ecclesiastical successor to all the rights, obligations, records, membership and property, both personal and real estate, and mixed of the Cumberland Presbyterian Church and the First Presbyterian Church of Clinton, Mo.

IV. Until the Churches are formally united by the Presbyteries the entire charge of all the services of both Churches and place of worship shall be under the control of the Sessions of the two Churches, and that Rev. James R. Burchfield supply the united Church as pastor.

V. When united by the Presbyteries the united Church shall then proceed to elect and install elders and deacons.

VI. That both Church properties be sold as soon as advisable and a new lot purchased on which to erect a suitable building which will be adequate for present and future needs. *W. K. Hotze, G. P. Baity and S. J. Walkup were appointed to go to Clinton and formally unite the two Churches in accordance with the above action of the Presbytery.*"

36—SAME MINUTES, page 7, reading as follows:

"New Church.—Official notice was brought to the Presbytery that the Kansas City Presbytery had dismissed the First Presbyterian Church of CENTERVIEW, MO., to the Lexington Pres-

bytery and on motion said Church was received under the care of the Presbytery and enrolled.

The following petition from the two Presbyterian Churches of Centerview, Mo., was presented to the Presbytery and adopted: To the Presbyteries of Kansas City and Lexington, of the Presbyterian Church, U. S. A. Greeting: After full conference and agreement of their respective sessions, the congregations of the two Presbyterian Churches in Centerview, Mo., formally began local co-operation and tentative union on the first Sabbath of January, 1905, looking toward complete consolidation and reorganization of the two churches at an early date. In pursuance of that action and of the continued desire of the congregations, as expressed by them by formal vote, when they were duly assembled, separately on January 18 and January 20, 1907, you are hereby requested to take all necessary steps at once to make these two Churches one Church on the following

BASIS OF UNION:

1. This organization shall be known as the Presbyterian Church of Centerview, Mo.

2. It shall be the full civil and ecclesiastical successor to all the rights, obligations, records, membership and property of the Presbyterian Church of Centerview, belonging to the Presbytery of Kansas City, and of the Cumberland Presbyterian Church of Centerview, belonging to the Presbytery of Lexington.

3. It shall be in ecclesiastical connection with the Presbytery of Lexington, belonging to the Presbyterian Church in the United States of America.

4. Its officers shall be elected and serve on the rotary system, the three classes first elected serving from the date of their installation until one, two and three years, respectively, after the annual Congregational meeting held in 1907.

5. Its officers, as elected at the time of the reorganization, shall consist of five Ruling Elders and four Deacons, the Deacons to serve also as ex-officio Trustees.

6. The annual Congregational meeting shall be held on the third Wednesday of March.

Respectfully submitted on behalf of the Churches we represent.

George S. Poage, Clerk of the Congregation of the Presbyterian Church of Centerview.

D. F. Holcomb, Clerk of the Congregation of the Cumb. Pres. Church of Centerview.

Centerview, Mo., January 20, 1907.

The Rev. J. W. McGee was appointed to go to Centerview and formally declare the union of the two Churches as effected by the Presbytery.

A call to the Rev. J. R. Burchfield to become pastor of the United Church of Clinton, Mo., was presented in regular order, and, in accordance with the terms of the basis of union previously adopted by these Churches and accepted by the Presbytery, W. K. Howe,

G. P. Baity and S. J. Walkup were appointed a committee to install the Rev. J. R. Burchfield."

37—SAME MINUTES, page 17, reading as follows:

"Whereas, The Lexington Presbytery of the Cumberland Presbyterian Church, now the Lexington Presbytery of the Presbyterian Church U. S. A., holds certain *permanent trust funds*, viz: Twelve hundred and sixty dollars (\$1,260.00) for Presbyterial Missions, five hundred dollars (\$500.00) for Superannuated Ministers, and eleven hundred and fifty dollars (\$1,150.00) for Education, and

Whereas, Only the interest of these funds can be used for the purposes indicated in the trust, and

Whereas, if the Assembly acts favorably upon the Presbyterial boundaries suggested by the Committees representing the Synod of Missouri and the Synod of Missouri A of the Presbyterian Church U. S. A., the Lexington Presbytery will become parts of two or three of the new Presbyteries, therefore,

Resolved, That this Presbytery instruct its Board of Trustees, now in charge of these funds, to take the necessary steps for the transfer of these funds to the respective Boards of the reunited Presbyterian Church U. S. A."

38—MINUTES OF THE PRESBYTERY OF OZARK, OCTOBER, 1908; FEBRUARY, 1909; APRIL, 1909; PAGE 5. Reading as follows:

"Elder J. B. Alsop was added to the *Judicial Committee* and the *affairs* of the *Mount Zion Church* (Dade County) were referred to this committee.

The Stated Clerk was authorized to distribute the funds received from the *Dinsmore estate* among the boards in accordance with the terms of the will, provided that he can get a satisfactory guarantee from said Boards that these funds will be returned to him in the event that the property interests of the former Cumberland Presbyterian Church are settled adversely to the union in this state.

The *name* of the *Stockton Church*, formerly Cumberland Presbyterian, was changed to Gum Spring, leaving but one church by the name of Stockton on our roll.

Rev. Henry Little, chairman, reported the recommendation of the Judicial Committee to the effect that the difficulties of *Mount Zion Church*, Dade County, *relative to the occupation of the house of worship* be referred to the Committee on Home Missions for the present. The recommendation was adopted."

39—SAME MINUTES, page 8, reading as follows:

"Mount Zion, Dade County, Evans, Buffal and Ray Spring left under the direction of the Pastor Evangelist."

40—MINUTES OF THE SPECIAL MEETING OF THE WEST PRAIRIE PRESBYTERY of the CUMBERLAND PRESBYTERIAN CHURCH HELD AT MALDEN, MO., November 21-22, 1905. PAGE 3, reading as follows:

"The *West Prairie Presbytery* of the Cumberland Presbyterian Church in special session met in the Cumberland Presbyterian

Church at Malden, Mo., at 7:00 P. M., November 21, 1905. Upon the following demand and emergency: To the Rev. H. D. Maness, Moderator of the West Prairie Presbytery, of the Cumberland Presbytery Church, Doniphan, Mo. The undersigned ministers and elders of the Cumberland Presbyterian Church and members of West Prairie Presbytery, would respectively request you to call said Presbytery to convene in special and call session to meet in the City of Malden, in the County of Dunklin and State of Missouri, within the bounds of said Presbytery, at as early date as convenient, and suggest the 15th day of November, 1905, at one o'clock p. m., in the Cumberland Presbyterian Church, and would respectfully state that there has an emergency arisen therefor. That is to say:

1st. To determine who are the regular, legal and rightful members of said Presbytery, submitting to the authority of the Church, both of ministers and elders or representatives of churches.

2nd. To determine if there are any recognized as members and holding any official position in said presbytery, who are in revolt against the constitution, authority and decisions of the superior judicatories of said Church, or any who refuse to submit and abide the decision of the supreme authority thereof on the subject of union and reunion of said church with the Presbyterian Church U. S. A., or any other decision of said supreme court, from which there is no appeal; or who are supporting and forcing upon the church any publication assailing the decisions and acts of the General Assembly with acrimony and bitterness, and stirring up strife in the church.

3rd. And if, upon investigation, it should be found and ascertained that there are members of West Prairie Presbytery in revolt against the decisions of our highest court, supreme legislative and executive authority thereof, to revoke and deprive such persons of any and all official positions, appointments and commissions in said Presbytery, or under its authority, and to fill all vacancies caused thereby, so as to put said Presbytery in harmony with the General Assembly.

4th. To investigate and determine any and all complaints of insubordination and assumption of authority not warranted by law.

5th. To ascertain the truth or falsity of certain favorable reports against members of the Presbytery, hurtful to their usefulness.

6th. To modify any matter or action cognate to the above, which is hurtful to our Church and Presbytery.

Rev. C. P. Browning,
Rev. M. Brooks,
Rev. J. D. Satterwhite,
Rev. J. A. Workman,
Elder C. L. Keaton,
Elder A. J. Williams,
Elder J. E. Black."

41—MINUTES OF THE WEST PLAINS PRESBYTERY OF THE C. P. CHURCH HELD IN MAMMOTH SPRING, ARK., MARCH 2ND TO 4TH, 1893. PAGE 17, reading as follows:

"Committee on Supplies and the condition of work, reported, which was concurred in and recommendations adopted, and is as follows, viz:

Your Committee on Supplies and Condition of Church Work, would report, that you have on your roll a church known as Mountain View Church. As they have no house, and but few members, *in Mountain View and its immediate vicinity*, and as an opportunity is opening up very favorably for establishing a church four miles north-west of Mountain View, we would recommend that you change the name to Liberty, and *transfer the entire membership* to that point as their church home."

42—MINUTES OF WEST PLAINS PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, HELD AT WILDERNESS, MO., SEPTEMBER 14TH TO 17TH, 1894: PAGE 10, reading as follows:

"The following preamble and resolutions offered by Rev. J. K. Craven were adopted:

We, the undersigned would offer the following to the West Plains Presbytery for their consideration:

Whereas we are reliably informed of the condition of *Howell Valley* Congregation, that her members have moved away, and some have died until there are none left, to sustain the cause; and that it is now impossible longer to hold that point; and since it is the request of the only available trustee:

Be it therefore resolved. First, that the name of this congregation be dropped from your roll.

Second; that the members of said congregation be advised to connect themselves with the congregation most convenient to them, of the same faith and order.

Third, that a committee of three be appointed to effect the sale of said church property, on such terms as they deem best, and turn over the proceeds to the Presbytery. J. K. Craven.

The Moderator appointed M. M. Rippee, J. K. Craven, and George H. Carter as the committee appointed for the foregoing resolution. Presbytery took recess until the close of the evening sermon."

43—SAN ANTONIO PRESBYTERY. CUMBERLAND PRESBYTERIAN CHURCH. JULY 5TH TO 8TH, 1899. PAGE 6, reading as follows:

"Dissolved Churches."

"7. *Official notification was sent to the sessions of the several churches which at your last meeting were dissolved or consolidated with other churches; also instructions to the sessions of the churches to which members were transferred.* Rev. W. W. Barker who was instructed to secure the *records of Carrizo Springs church*, has done so, and turned the session book over to this office.

8. The churches at *Blanco* and *Kyle* which were consolidated with the church at San Marcos, have expressed some dissatisfaction with the action of the Presbytery and it may be best to offer a restoration of their organization *if they are willing* to do what they can to sustain the cause and *send representatives to presbytery*. P. 24.
(Referred to Judiciary Committee.)

Karnes City Property.

9. The property of the church at Karnes City has never been disposed of. A committee was appointed July, 1898, to report on the propriety of turning it over to the church at Cuero to aid in their building, but no report is on record, nor has this office received any information either from Karnes City session or the session at Sedan, if the consolidation of these churches has ever been effected. p. 24, 25.

(To Judiciary Committee.)

10. No information has come to hand as to the consolidation of Shady Grove and *Stockdale* churches.

(Committee on State of Religion.)"

44—SAME MINUTES; page 25, reading as follows:

"Report.—L. We have examined the items in the Stated Clerk's report which were referred to us, concerning the legality of your action last December in dissolving certain congregations. We find that the presbytery has the right under the constitution to dissolve said congregations. Cons. page 90, sec. 31.

2. Information having reached us that certain members of the Kyle church are dissatisfied with your action in attaching them to San Marcos, they having a preference for Buda, we recommend (1) that the stated clerk be instructed to communicate to them the permission of this presbytery to attach themselves to the Buda congregation if so desired. (2) Any congregation effected by said act of presbytery shall be restored to their former standing in this presbytery *when they shall renew their allegiance to the presbytery, and conform to the constitution of the church.*"

45—SAME MINUTES; page 26, reading as follows:

"*Karnes City property*.—In view of the statement of Elder Baker of the Cuero church that there was no disposition on the part of that church to insist on any equities under the former deliverance of the presbytery, it was ordered that the trustees be instructed to *allow the church at Cross Roads to remove the house of worship at Karnes City* to the vicinity of Red Rock; *provided*, that one acre of ground in an eligible location be donated for the church at that place." P. 25.

46—SAME MINUTES; PAGE 27, reading as follows:

"1. That the petition of *Bellevue* congregation, asking that the name of their church be *changed*, be, and the same is, hereby granted, and the clerk is instructed to enroll that church as 'Cheap-side Cumberland Presbyterian Church.' "

47—SAN ANTONIO PRESBYTERY. CUMBERLAND PRESBYTERIAN CHURCH. NOV. 29TH, 1899. PAGE 6, reading as follows:

"Church Property."

"4. Reports are due at this meeting from the Board of Trustees as to the bequest of lands on the San Antonio River and the title to the church property at Manchaca; also from the trustees of Karnes City Church as to removing that church house to Red Rock on conditions indicated by Presbytery (Printed minutes, p. 26)."

48. SAME MINUTES; PAGE 17, reading as follows:

"*Bear Creek Church*.—The following petition from the newly organized church at Bear Creek was concurred in and the name of the church enrolled, and Jesse McWilliams seated as its representative."

"We the undersigned respectfully represent that on the 4th day of August, 1899, there was a church organized by the Rev. J. J. Milstead and G. J. McGee, a new church adopting the principles of the government of the Cumberland Presbyterian Church, with a membership of eighteen and electing the undersigned as ruling elders. Under and by authority of said church we do hereby apply to be received under your care, and we promise a cheerful compliance on its part as well as our own with all the duties and obligations enjoined upon particular churches and their officers by the government of the Cumberland Presbyterian Church. Jesse McWilliams, J. M. Jones, Jr., Chas. Noven, Oscar Cullenberg."

49. MINUTES OF KANSAS SYNOD OF THE CUMBERLAND PRESBYTERIAN CHURCH, FEB. 6TH TO 8TH, 1900, page 6, reading as follows:

"Judiciary Committee: The following report of the Judiciary Committee was adopted: Your Committee on Judiciary has considered the petition of *Republican Valley Presbytery* and recommend that the petition be granted and said Presbytery be dissolved and the congregations and ministers within its limits be made a part of *Atchison Presbytery*; also, we recommend that the *Presbytery of Eden* be dissolved and the ministers and congregations within its bounds be transferred to the *Wichita Presbytery*. M. S. Mayse, Samuel Garvin, R. H. Sherar, D. J. Wood."

50. SAME MINUTES, page 7, reading as follows:

"At *Garden City* our people have united with the Congregationalists, establishing a union church. Our Board of Missions holds a mortgage of \$600 against our house in which the union church is worshipping. Our trustees have deeded their interests to the church, but the Board of Missions controls the property. We recommend that it still hold it to see if our people there do not experience a change of heart.

At *Scott City* we have a good house and parsonage against which the Board of Missions has a mortgage of \$500.

At *Leoti* the Presbyterians have organized a church in our

house. We recommend that these places be held, and we urge the Board of Missions to help them at its earliest opportunity, as the Synod's hands are now tied. Samuel Garvin, J. Wood Stone, C. M. Tabler."

51. SAME MINUTES, page 12, reading as follows:

"At this meeting we carefully considered the interests of your Kansas City mission. We find the mission in the most encouraging condition, with brighter prospects before it. During the year a good building site 74 x 124 feet has been secured for \$550 on the corner of Tenth Street and Barnett Avenue. The lots are paid for. The location in the judgment of your Committee is as good as can be desired. A basement for the chapel 32 x 44 ft., of splendid building stone, is built and paid for. The lumber sufficient to enclose this chapel is purchased and all paid for excepting \$100. The work of preparing the chapel for occupancy will go forward as rapidly as funds are provided."

52. MINUTES OF KANSAS SYNOD OF THE CUMBERLAND PRESBYTERIAN CHURCH; AUGUST 25TH, 1898, page 4, reading as follows:

"Resolved, That the Committee on Missions be instructed to give Synod such information concerning the missions at Topeka, Fort Scott, Garden City, Leoti, and Scott City, as will enable us to take Synodical action with reference to these points, as far as our interests are involved."

53. SAME MINUTES, page 12, reading as follows:

"4. We have had referred to us a resolution concerning Topeka, Fort Scott, Garden City, Leoti, and Scott City.

1. We have no missionary pastor in the Cumberland Presbyterian Church at Topeka at present, but we are informed that as soon as the proper man can be secured to take charge of the church, work will again be undertaken there.

2. Rev. J. B. Green took charge of the church at Fort Scott a little more than a year ago. Since that time work has been moving along very smoothly, and, at present, is in the best condition it has been for years. This church does not receive any assistance from the Board of Missions, and has not since Dr. Green has had charge of the work.

3. Garden City has been dropped from the Minutes of the Assembly this year.

4. Leoti and Fort Scott have had no pastor for the past year.

Respectfully submitted,

L. W. Madden, Chairman."

54. MINUTES OF THE SYNOD OF TEXAS A (CUMBERLAND), SEPT. 13TH TO 17TH, 1906; page 16, reading as follows:

"Your Committee on Overtures respectfully submit the following report:

1. We have had before us an overture from Amarillo Presbytery asking that the *congregations located in Baylor County* be transferred to Gregory Presbytery.

We recommend that *Seymour and Dundee* be transferred to Gregory Presbytery.

We also recommend that Rev. W. L. Livingston be transferred to Gregory Presbytery.

We have had before us the representatives from the Fort Worth and Marshall Presbyteries setting forth the fact that an emergency exists demanding the immediate transfer of Rev. R. R. Rives who is soon to move from the Ft. Worth to the Marshall Presbytery. Also Rev. W. R. Hudson from Austin to Marshall Presbytery.

The reason given for asking for said transfer is that there are now only two ministers in the bounds of Marshall Presbytery. We therefore recommend that said transfer be made at once. F. E. Leech, Chairman."

55: SAME MINUTES; page 17, reading as follows:

"Your Committee to whom was referred the communication from a member of the Jefferson congregation in the Marshall Presbytery, pertaining to the filing of an injunction by the non-union element against the union members, prohibiting them from the use of the church property, call attention to the action of the General Assembly as follows:

"Resolved, That the said Executive Committee is hereby authorized, from time to time as occasion may require, to employ such legal counsel as in its judgment may be necessary to defend or prosecute any litigation which may arise in any part of the church during the ensuing year, and to concert such other measures as it may deem necessary to protect and promote the interest of the Church, and

Resolved, That Rev. S. M. Templeton, D. D., be made Vice-Chairman of said Committee'" (See Cumberland Presbyterian Assembly Minutes, 1906, pp. 112, 113).

The Executive Committee consists of the following: Rev. Ira Landritk, Chairman; Rev. J. M. Hubbert, Secretary; Rev. S. M. Templeton, Vice-Chairman; Rev. W. M. Crawford, J. M. Gaut, Esq., and Rev. J. S. Grider.

In view of this action we recommend:

1. That *this Synod appoint a Committee* as follows: Rev. M. C. Johnson, S. M. Templeton, L. C. Kirkes, J. F. Smith, J. W. Caldwell, and Elders F. J. Dickey, L. M. Buie, C. D. Lennox, and M. B. Templeton, to whom all legal matters arising in the Synod may be referred, that aid may be rendered local congregations in the *defense of their rights and property*.

2. That the Committee be empowered by this Synod to solicit subscriptions for the purpose of meeting the expenses incurred in the prosecution of such duties involved in the defense of any suits that may be instituted.

3. That the Committee correspond with Judge Gaut and request his attendance as may be required in the management of any suits before the courts.

4. That in the suit of the Jefferson church the Synod request Rev. S. M. Templeton to be present and render counsel his assistance as his knowledge of the law of the Church and the history of the steps taken in consummating the union justify. His expenses to be paid from the funds secured by the Committee. L. M. Buie, J. H. Bone, Chas. Manton."

56. SAME MINUTES; page 24, reading as follows:

"Report on Judiciary."

"The report of the Committee on Judiciary was adopted as follows: Your Committee on Judiciary have had before us certain documents from the Stated Clerks of the Presbyteries to the Stated Clerk of Texas Synod A, and make the following resolutions on the report relative thereto:

Resolved, 1. That this Synod recognizes as the true and lawful Presbyteries possessing all the rights of succession in the reunited Church to the identity and interests of the Presbyteries of the same names prior to the reunion, the following bodies designated and described by the names of the moderators and Stated Clerks thereof at the last meetings before this meeting of Synod:

Presbyteries which have met since the Decatur Assembly, with the number of ministers on the roll as shown by the Assembly Minutes of 1906, given in the first number, and by the second number, the number of ministers who renounced the reunited Church at the recent meeting of the Presbytery."

57. SAME MINUTES; page 25, reading as follows:

"Resolved, 2. That this Synod now makes judicial record of the fact that the so-called Presbyteries composed of ministers who have renounced the jurisdiction of the reunited Church, are not Presbyteries of the Cumberland Presbyterian Church or of the reunited Presbyterian Church in the United States of America, for the following reasons: (1) That the said ministers have by their own action, personal and collective, renounced the jurisdiction of the said reunited Church, thereby becoming independent, and (2) That the only Cumberland Presbyterian Church that has ever existed has by its own constitutional and legal action negotiated and consummated a reunion and union with the Presbyterian Church in the United States of America, adopting the official name of said Church; and the existence and identity of the said Cumberland Presbyterian Church are now incorporated into and form a part of the said reunited Presbyterian Church in the United States of America.

"Resolved, 3. That as to the Presbyteries of Bonham, Dallas, Denton and Marshall, which have not met since the Decatur Assembly, this Synod orders its Stated Clerk to recognize as the legal Presbyteries of the reunited Church and lawful successors of same

bodies as they existed prior to the reunion, those bodies composed of ministers abiding the decision made by the Cumberland Presbyterian Church in consummating the reunion; and this Synod now declares that those ministers, if any, in such Presbyteries yet to meet, who may hereafter renounce the jurisdiction of the reunited Church, will thereby separate themselves from the reunited Church and divest themselves of all rights therein; and the Stated Clerk of Synod is hereby ordered to recognize the bodies and ministers abiding the reunion, and upon certification to him by the Stated Clerks of said Presbyteries to report same to the General Assembly through the Stated Clerk."

"Resolved, 4. That the Presbyteries are advised and directed to retain upon their rolls all the congregations heretofore under their care, until such time as in the discretion of the Presbyteries any of the said congregations should be dropped from the roll, or dismissed; and that in each case before a congregation is dropped from the roll or dismissed on account of opposition to the reunion, the Presbytery should patiently ascertain whether the opposition is due to misapprehensions that can be removed by facts, or to passion that may be allayed by time and a forbearing and forgiving spirit.

Resolved, 5. That the Louisiana Presbytery be directed to meet at Greenwood Church, Louisiana, on the 14th day of November, 1906, at 7:30 o'clock, P. M.; and that Rev. E. C. Cargill act with the Stated Clerk of Synod in giving notice of said meeting, and act as moderator until a moderator is elected; and if less than a quorum be present, that the members present be hereby empowered to receive as members of the Presbytery such ministers as may be present, and proceed with the business of Presbytery.

Resolved, 6. That should a quorum not be present at the time and place for the regular meeting of the Marshall Presbytery, the members present are hereby empowered to receive such ministers as may be present as members of the said Presbytery and proceed with business.

Resolved, 7. That the following ministers be recognized as constituting the legal and constitutional Presbytery of Gregory, with full succession to the identity, rights and interests of the Presbytery of Gregory prior to the consummation of the reunion in May, 1906; to-wit: W. A. Morris, J. W. Morris, J. M. Small, R. W. Stanfield, W. J. Walker, J. J. Dalton, W. J. Rogers, and C. P. Hester.

Resolved, 8. Further, that the acts of any body of men who have renounced the jurisdiction of the reunited Presbyterian Church in the United States of America, and who claim or may claim to be the Gregory Presbytery of the Cumberland Presbyterian Church, are without authority or right as such pretended Presbytery, and are destitute of any Presbyterian jurisdiction over any of the churches of the Gregory Presbytery.

All of which is respectfully submitted. Callin W. Yates, H. F. Bone, D. M. Prendergrats, S. Park."

58. SAME MINUTES; page 46, reading as follows:

"At the meeting of the Board in November it was determined to concentrate its energies upon Greenville in the building of a new house of worship. The session of the church at *Greenville* was authorized to raise money for the building in the bounds of the Synod, the canvass to be made between the months of January and June, 1906. It was also agreed that the offering of Children's Day be set aside for that purpose. The sum of \$146.98 is in the treasury to the credit of that fund.

The property at Shreveport is no longer in the possession of your Board. The Board of Missions was requested to take charge of said property, and, at such time as was advisable, place a missionary pastor in charge. Rev. W. B. Allen having a lien upon the property, it has since passed into his hands and is held by him for such investment as he may desire."

59. MINUTES OF THE ILLINOIS SYNOD OF THE CUMBERLAND PRESBYTERIAN CHURCH: Oct. 6-9, 1896. PAGE 19, reading as follows:

"5. Finally, that you encourage your people by reminding them of what the Synod has accomplished by organized, co-operate effort. Many dying churches have been revived, new fields have been occupied, our Sunday Schools greatly increased in numbers and efficiency and the contributions of our people to the Lord's cause multiplied. Although our Synod is fourth in numerical strength, it has for several years led all in offerings and in growth of membership."

60. MINUTES OF THE ILLINOIS SYNOD OF THE CUMBERLAND PRESBYTERIAN CHURCH; OCT. 8-11, 1895; PAGE 25, reading as follows:

"The following resolution was adopted:

Whereas, The Foster Presbytery, in the Synod of Illinois, and the Wabash Presbytery, in the Synod of Indiana, did jointly memorialize the last General Assembly to Change the Presbyterial lines between said Presbyteries so as to transfer the congregation of Mt. Zion from the Wabash to the Foster Presbytery. And,

Whereas, *The Assembly* made said transfer provided the above said Synods concur in the action. Therefore,

Resolved, 1. That this Synod hereby expresses concurrence, and 2. That the Stated Clerk is hereby instructed to officially notify the *Indiana Synod* of this action." (Assembly Minutes, 1895, p. 21).

61. MINUTES OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH; 1895; PAGE 21, reading as follows:

"Report No. 5.—The memorial from Wabash Presbytery, of the Synod of Indiana, prays that the line between Indiana Synod and the Synod of Illinois be so changed that the Mt. Hermon and Mt. Zion congregations shall be included in the Illinois Synod. The

Foster Presbytery of the Synod of Illinois sends memorial for the same purpose."

62. MINUTES OF THE PRINCETON PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH, (KENTUCKY); SPRING SESSION, 1892, PAGE 23, reading as follows:

"5. Resolved. That the Committee on Providence Church property be continued and asked to report at next meeting of Presbytery."

63. MANUEL OF THE PRESBYTERY OF PHILADELPHIA; JANUARY, 1909, PAGE 82, reading as follows:

"The Clinton Immanuel Church Foundation."

"This Agreement, Made the first day of November, in the year of our Lord one thousand nine hundred, by and between the Clinton Street Immanuel Presbyterian Church, parties of the first part, and the Trustees of the Presbytery of Philadelphia, parties of the second part, WITNESSETH: Whereas, On the 21st day of February, A. D. 1898, the Presbytery of Philadelphia *did advise the sale of the real estate at the northeast corner of Tenth and Clinton Streets, in the City of Philadelphia, belonging to the Clinton Street Immanuel Presbyterian Church, and did recommend that the proceeds of said sale should be transferred to the Trustees of the Presbytery of Philadelphia by a formal instrument to be prepared under legal advice, setting forth that the moneys so transferred should be accepted and held under the trusts hereinafter mentioned.*"

64. MINUTES OF McGEE PRESBYTERY, JUNE, 1907, PAGE 5, reading as follows:

"By order of the Presbytery the proceeds of the sale of the *Jamesport Church* were directed to be turned over to the Presbyterial treasurer to be held as a permanent fund, the interest of which shall be used for the mission work of the Presbytery."

"The Board of Trustees was directed to *sell* the real estate of the *Hopewell Church* at the best possible figure and report at next stated meeting."

65. MINUTES OF McGEE PRESBYTERY, SEPTEMBER, 1908, pp. 5, 9, 12, 13, reading as follows:

"To notify the former Stated Clerks of McGee and Chillicothe Presbyteries to turn over all books and Records at once to your Stated Clerk, have all been complied with. I have not furnished *letters* to the members of the *Bethel* congregation (Macon County), because so far I have not been able to get the names."

"On the *Sale of the Bethel (Macon County) Church property*—R. G. Mitchell."

66. PAGE 9: MINUTES, McGEE PRESBYTERY, 1908, reading as follows:

"In the special fund (sale of the *Jamesport church*), \$604.21." From the Treasurer's Report.

67. PAGE 12: MINUTES McGEE PRESBYTERY, 1908, reading as follows:

"The Session of the Church of *Hamilton*, being appointed as a committee by your body to grant *letters* on dismission and recommendation to the remaining members of the church of *Polo*, in your action dissolving that organization, hereby present the following report.

We found seven names on the roll of the Session book. One of these we granted a letter to the M. E. Church, South, at *Polo, Mo.*, two to the Presbyterian church of Cowgill, Mo., and the other four to the Presbyterian church of Kingston, Mo.

We recommend that the church of *Polo* be declared dissolved and the name be stricken from the roll. Also that the *Session book* of the same, which is herewith presented, be filed with the Stated Clerk of Presbytery. Respectfully submitted, J. C. Templeton, Moderator, Tinsley Brown, Clerk, F. A. Martin, E. C. Stewart, W. T. Lindley."

68. MINUTES OF McGEE PRESBYTERY, 1908, PAGE 13.

"HOME MISSIONS—REPORT NO. 2."

"3. That the amount, \$18.56 from the sale of property of the *New Liberty Church* be turned over to your Treasurer and become a part of the permanent fund of the Home Mission work of the Presbytery."

MINUTES OF McGEE PRESBYTERY, APRIL, 1909; pp. 11, 17, 26 and 27.

PAGE 11.

"4. That the following consolidation of churches be made: (a) The *Magnolia* and *Bethel* Churches in Linn County be united into one church on terms already agreed to by these churches, the name hereafter to be the *Bethel Church*. (b) The *Ardmore* Church in Macon County, be united with the *College Mound Church*, the name hereafter to be *College Mound Church*. (c) In each instance the consolidated church to become the legal owners of the property of the two churches—the title to be vested in its Trustees."

"5. That the *Lingo Church*, Macon County, be dissolved and its name stricken from our roll. That the Stated Clerk be authorized to grant *letters* to any who may make application for the same. That the Rev. R. A. Bartlett and Elder B. E. Guthrie be appointed a committee to look after any *property interests* of the *Lingo Church*, and report what action, if any, the Presbytery should take."

"6. That the former Presbyterial Trustees, A. J. Selby, John Burge and John Minich, be authorized to convey by deed the one acre of ground which they hold in trust, for the *Hopewell Church*, to the Trustees of the *Bethel Church*, Davies County, with which the Hopewell Church has been united."

"7. That Presbytery appoint a special commission of two, viz.: Rev. J. F. Fetterolf and Elder F. E. Riley, who with the Synodical Superintendent, Rev. J. B. Hill, shall be authorized to look after the title to lots in *Wheeling, Mo.*, said to be the property of the Presbyterian Church, and to sell the same at the best advantage, reporting their action to the Presbytery."

69. PAGE 17. MINUTES MCGEE PRESBYTERY, 1909.

"A communication from certain members of *Bethel Church*, Macon County, Mo., regarding the disposition of their church property was read, and their action adopted.

In view of the death of the lamented R. G. Mitchell, who was ordered by your body to dispose of *Bethel Church*, Macon County, Mo., we the undersigned remaining members of said church submit the following report in regard to the disposition of said church property:

The above mentioned church property has been sold for the sum of fifty (\$50.00) dollars, which sum has been applied to the erection of the Presbyterian Church, U. S. A. at College Mound, Mo., and we, the undersigned, now being members of the said Presbyterian Church U. S. A. at College Mound, Mo., pray your ratification of this report and appropriation. Birdie Marshall, A. J. Marshall, Delia Marshall."

70. MCGEE PRESBYTERY MINUTES, April 1909, page 26, reading as follows:

"(6) Again I have to report that the most diligent effort has failed to reveal the names of the *Bethel* (Macon County) members entitled to letters."

71. MINUTES MCGEE PRESBYTERY, APRIL, 1909, reading as follows:

"The Stated Clerk was authorized and directed to grant letters of dismission and recommendation to remaining members of the *Mabel church*."

72. MINUTES OF MCGEE PRESBYTERY, SEPTEMBER, 1907, page 4, reading as follows:

"The chairman of your committee and another member of it have made investigation of the condition of the church at *Glasgow* as best we could, and recommend that you declare in the light of all the facts, that the *Glasgow church* be released from the monetary obligation claimed against it by its former pastor."

Page 8:

"We recommend that *Bethel Church* in Macon County be dropped from the roll, and the property sold by Mr. R. G. Mitchell of Macon and letters of dismission granted to remaining members by your Stated Clerk."

73. SAME MINUTES, Page 10, reading as follows:

"Report of Stated Clerk and Treasurer."

"I gave letters to all the members of the *Jamesport* congregation as furnished by Rev. J. H. Tharp.

T. W. Baker, Stated Clerk and Treasurer "

74. MINUTES OF SALT RIVER PRESBYTERY, MARCH, 1906, p. 3, reading as follows:

"A communication relative to the church property at Montgomery City was read and referred to a committee composed of Rev. R. Q. Elmore and Elder John Jeffries, with power to dispose of the property as they think best."

75. MINUTES OF SALT RIVER PRESBYTERY, AUGUST, 1906, page 7, reading as follows:

"The following preamble and resolution presented by Rev. E. D. Pearson, D. D., were adopted:

Whereas, our beloved brother, *Rev. W. T. Rowley*, in his last will, after some gifts made to his relatives and others, did bequeath the residue of his estate to Salt River Presbytery, to be used by the said Presbytery in supporting a missionary in China, and

Whereas, a part of said property bequeathed was a joint interest in real estate, and

Whereas, a partner in said property has filed a petition in the Circuit Court of Pike County, Mo., to sell the same for partition, and

Whereas, official notice has been served upon the Moderator and Stated Clerk of this Presbytery, while in session, namely, Rev. R. O. Elmore, Moderator, and Rev. E. D. Pearson, Stated Clerk, by the deputy sheriff, Mr. Wm. H. Emmerson, and

Whereas, we do recognize the service of said notice, therefore,

Resolved, that this *Presbytery does employ Pearson and Pearson, attorneys at law, in Louisiana, Mo., to look after and represent this Presbytery in whatever interest, real or personal, that it may have by reason of the bequest made in said will, being fully empowered to act with discretionary power.*

Resolved, that we do fully appreciate the benevolent spirit of our beloved brother Rowley in this timely gift to the cause of missions—a cause in which his heart was deeply interested."

76. MINUTES SALT RIVER PRESBYTERY, AUGUST, 1906, page 12, reading as follows:

"Report of Committee on Sale of *Montgomery City* Church property was accepted.

Your Committee to whom was entrusted the sale of our church property in *Montgomery City*, would report as follows:

We made sale of the property for,	\$775.00
Commission for selling, \$25.00; abstract deed, \$1.50	
Affidavit, \$1.00	27.50

BARKLEY ET AL. V. HAYES ET AL., AND

Writing deed, \$1.00; acknowledging deed, \$1.00; recorder's fee; \$2.00; expense of committee, \$3.50	7.50
Total expense	35.00
Net Balance,	\$740.00

The above amount is deposited with your Treasurer. R. O. Elmore, John Jeffries."

797—SALT RIVER PRESBYTERY MINUTES, AUGUST, 1906; page 16, reading as follows:

"There is also the money collected from the sale of the church house in MONTGOMERY CITY, \$740.00—seven hundred and forty dollars—which is now in the possession of the Treasurer. Respectfully submitted, E. D. Pearson, Treasurer."

Rockdale, Texas, Dec. 8th, 1909.

78—*Official copy of the action of the Presbytery of Austin of the Presbyterian Church in the United States of America, in dissolving the Cumberland Presbyterian U. S. A. Church of Austin, Texas: At a meeting of said Presbytery Held in Rockdale, Texas on Nov. 4th, A. D. 1909.*

WHEREAS. The action of the Presbytery of Austin dissolving the Cumberland Presbyterian Church U. S. A. of Austin and providing for the sale and disposition of the property of said church, was complained against by Rev. I. N. Clack et al. to the Synod of Texas: and

WHEREAS. The Synod through its Judicial Commission remanded the case to the Presbytery of Austin upon the technical grounds that due notice of the intention to dissolve said congregation had not been given to the congregation upon two Sabbaths from the pulpit: and

WHEREAS. The Presbytery of Austin in session at Rockdale, Texas, ordered the Moderator and Clerk of the session of said Church, to read such notices of its intention to dissolve the church, from the pulpit of said church upon Oct. 24th and Oct. 31st, and

WHEREAS. Dr. E. B. Wright, the Moderator, certified the Stated Clerk of Presbytery that said notices had been duly and legally given: and

WHEREAS. Representatives of said congregation present at the adjourned meeting of the Presbytery at Rockdale, Texas, Nov. 4th, 1909, were given opportunity to speak, though disclaiming to represent the Austin Cumberland Presbyterian Church U. S. A., and claiming to represent Grace Church, a church not on the roll of Presbytery; and

WHEREAS. No sufficient reasons were given why the church should not be dissolved: THEREFORE, *be it RESOLVED.*

FIRST: That the Cumberland Presbyterian Church of Austin, in connection with the Presbyterian Church in the United

States of America, be dissolved; said dissolution to take effect today, November the 4th, A. D. 1909.

SECOND: That the Trustees of said Church, viz: W. B. Harper, President; N. J. Clancy; G. M. Bynum; Jno. W. Hornsby; J. T. McKeown and C. P. Ledbetter, be ordered to execute a deed of conveyance of the property of said church to the Trustees of the Presbytery of Austin, Texas, of the Presbyterian Church in the United States of America.

THIRD: That said Presbyterial Trustees, viz: Rev. Arthur F. Bishop, D. D. with Elders N. J. Clancy; C. L. Condit; W. E. McCullough and T. E. Oatts, are hereby requested and authorized to take charge of the property belonging to said church, and to conserve and hold the same, subject to the order and discretion of Presbytery.

FOURTH: That the Stated Clerk of Presbytery shall issue letters to all members desiring them, to whatever church they may designate.

FIFTH: That the Stated Clerk of Presbytery notify said church of this action."

79. MINUTES OF THE PARIS PRESBYTERY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES: reading as follows:

April 26, 1907. Under Home Mission Recommendations, "3d. That the Trustees of Presbytery, A. W. Wilson, J. P. Holmes and B. J. Baldwin, be authorized to sell the church lot at Wolfe City and appropriate the proceeds to the Mineola church for the building of a house of worship, provided that the building be erected within eighteen months."

80. "AT WINSBORO, APRIL 11TH, 1908. Same Minutes; reading as follows:

"Rev. A. W. Wilson D. D. made a report for the Trustees of Presbytery as to the lot belonging to us at Wolfe City, Presbytery instructed the Trustees to sell the lot."

81. At Texarkana, Oct. 15th. Same Minutes; reading as follows: Supplemental Home Mission Report.

"It was recommended and adopted," 4th. That the \$49.00 received from the Wolfe City lot be given to the Troupe Church provided they build before Sept. 1909."

PROPERTY DISPOSED OF BY THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH.

82. MINUTES OF GENERAL ASSEMBLY, 1897, pages 47-48. COLORADO SPRINGS, COLORADO, ROCKY MOUNTAIN PRESBYTERY, reading as follows:

"Report II. On Committee on Overtures.

The Committee on Overtures submitted the following report, which was adopted:

1.—Church Property at Colorado Springs, Colo.,

Your committee would respectfully report that we have considered the memorial from Rocky Mountain Presbytery, asking the return or conveyance of the title to the church property at Colorado Springs, Colo., and we recommend that the prayer of said memorial be granted, that is to say: That this General Assembly direct the Board of Missions and Church Erection to deed the Colorado Springs (church) property, now held by the Board of Missions, to the Board of Trustees of the First Cumberland Presbyterian Church of Colorado Springs to be held and used by said Board of Trustees and their successors in office for the use and benefit of said Church of Colorado Springs, with the provisory clause in the deed, that in case of the death or dissolution of said church, or if it should cease to be able to support itself, or cease to adhere to the doctrines of, or renounce the government and control of, the Cumberland Presbyterian Church of the United States of America, then the Board of Trustees of the First Cumberland Presbyterian Church of Colorado Springs shall place the property of said church at the disposal of the Rocky Mountain Presbytery of the Cumberland Presbyterian Church, or whatever Presbytery may rightfully control said church at said time, or, in other words, that the Presbytery in whose bounds said church may be situated shall take the title and estate of said church property as the property of, and for the use and benefit of, the Cumberland Presbyterian Church, in the bounds of such Presbytery, in case of such death, dissolution, or default of said Colorado Springs Church. All of which is respectfully submitted and recommended."

CHURCH IN WEBSTER COUNTY, KENTUCKY:

83. MINUTES OF GENERAL ASSEMBLY OF CUMBERLAND PRESBYTERIAN CHURCH, 1897, PAGE 66, reading as follows:

"Report of Committee on Judiciary."

"The Committee on Judiciary submitted the following report, which was adopted:

1.—Property Deeded to The Church.

Your committee would report on the matter of deed to a certain parcel of land situated in the County of Webster, originally the County of Hopkins, State of Kentucky, and fully described by metes and bounds, as set forth in said deed, vesting title to said property in the "Cumberland Presbyterian Church," of the state and county aforesaid. While there is nothing before your committee except the deed above mentioned, yet your committee are reliably informed that the church having the use and possession of said lot, since the year 1859, desire to sell and reinvest the proceeds in other and more desirable property for church purposes. That this may be done, *your committee recommend that the following be appointed trustees regularly by the Session of said church so holding said property, to-wit: John C. Jenkins, Laban Lisman*

and J. T. Skinner, *who shall be empowered to sell said property and reinvest the proceeds in other property, for the use and benefit of the church now in possession of said real estate.*"

84. TCHULI, MISSISSIPPI:

MINUTES, GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH, 1900, PAGE 90, reading as follows:

"Whereas, the Cumberland Presbyterian Church in the Town of Tchuli, in Holmes County, Miss., has become disorganized by deaths and removals of the membership; and

Whereas, The title to the church property of the said church is held by the Trustees of the General Assembly of the Cumberland Presbyterian Church; therefore,

Resolved, That the said Trustees be and are hereby instructed to sell the said church property and to turn the proceeds of said sale into the treasury of the Church Extension Committee of the Synod of Mississippi, the said proceeds to be used by the said Church Extension Committee of the said Synod for church building within the bounds of said Synod of Mississippi."

85. MINUTES OF GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH, 1901, PAGE 31, reading as follows:

"Sale of church property at Tchuli, Miss."

"That the Assembly rescind its former action authorizing the sale of certain church property at Tchuli, Miss.—Yazoo Presbytery.

Referred to Committee on Missions and Church Erection."

86. MINUTES, 1901, PAGE 72, reading as follows:

"Memorial from Yazoo Presbytery.—The Memorial from Yazoo Presbytery asking that you rescind the action of the last Assembly with reference to the Church property at Tchuli, Miss. was before us, and we recommended that the request be granted."

KILMICHAEL, MISSISSIPPI:

87. MINUTES OF GENERAL ASSEMBLY OF CUMBERLAND PRESBYTERIAN CHURCH FOR 1901. PAGE 45, reading as follows:

"A resolution by Rev. J. G. Robinson, relating to sale of Church property in Kilmichael, Miss., was referred to the Committee on Judiciary."

Minutes, 1901, page 56:

"6. Church Property at Kilmichael, Miss."

"The communication from Rev. J. G. Robinson states that W. W. Johnson conveyed to trustees of the Cumberland Presbyterian Church certain real estate in Kilmichael, Montgomery Co., Miss., and requests that you direct the Board of Trustees to convey, or join Brother Johnson in a conveyance, of said property to the elders of the church, and their successors in office, with a

proviso in the deed that if the property should ever cease to be used as a Cumberland Presbyterian Church, the title should vest in Yazoo Presbytery, with power to use it, or its proceeds, for the benefit of some Cumberland Presbyterian congregation. We recommend that you express your wish that the title to the property should be vested, either in the trustees or elders, in such manner that it will vest in the Presbytery in the contingency named, and that if it is not now so limited, you authorize and request that such change be made in the title as will so limit it."

88. PRESBYTERY OF ST. LOUIS, U. S. A. HOT SPRINGS CHURCH.

Record C, page 484.

"The following recommendation of the Home Mission Committee was on motion adopted, viz: Resolved, that the Home Mission Committee is hereby authorized and empowered by the Presbytery of St. Louis to call a meeting of the congregation of the Second (or Central) Presbyterian Church of Hot Springs, Ark., in connection with the Presbytery of St. Louis, U. S. A., and to instruct the trustees of said church with reference to the disposal of the property owned by the congregation, and in general to take such measures as shall secure the claims of the Presbytery, also of the Board of Church Erection for certain moneys advanced to the church by them."

89. Record D, same page 128.

"The Home Mission Committee reported, "We report to you the sale of the Hot Springs Church property for the sum of \$2500. After settlement with the Board and the Southern Church there will be a small balance in the hands of our Committee's treasurer."

90. PRESBYTERY OF ST. LOUIS, U. S. A. CHURCH OF ST. JAMES.

Record B, pages 236, 237:

"Rev. J. J. Marks was requested, if possible, to secure the Communion Set which belonged to the church at St. James dissolved by Presbytery, and hold the same subject to the order of Presbytery."

91. PRESBYTERY OF ST. LOUIS, U. S. A. POINT PRAIRIE CHURCH.

Record B, pages 351 and 352:

"Elder B. A. Alderson made a report in regard to Point Prairie Church after which Presbytery made the following resolution.

"Resolved, That the church at *Point Prairie* be dissolved and that the session of the church at St. Charles be hereby empowered to grant *letters* to any members of the church so dissolved who may apply for them. Resolved, that Elder B. A. Alderson be appointed, in connection with the Committee of Church Erection, *to take charge of the property of the Point Prairie Church*, and if deemed advisable, *to dispose of it* to the best advantage possible."

92. PRESBYTERY OF ST. LOUIS, U. S. A.
OZARK CHURCH.

Record B, page 56.

"The destitute condition of the field at Ozark being brought to the notice of Presbytery, Rev. J. J. Marks, Presbyterial Evangelist, was directed to visit the field and report concerning the condition of affairs." (Page 100) "Rev. J. J. Marks, Presbyterial Missionary, reported concerning *Ozark Church* (See page 56 B), *the congregation dispersed with no hope of regathering; only the church building remaining.*

Referred to Standing Committee on Church Erection."

(Page 186) "The deed to the Ozark Church having been discovered and brought into Presbytery by Rev. J. J. Marks who was authorized to examine and report the condition of that property, the Committee on Church Erection, was requested, if possible, to visit the place and recommend action touching the disposition of the property."

(Page 295) "The Committee on Church Erection reported negotiations in progress for the sale of the Ozark Church building, and asked the approval of the sale for the sum of \$250.00, which was granted."

93. PRESBYTERY OF ST. LOUIS, U. S. A.
SALEM CHURCH.

Record C, page 577.

"The Committee appointed to visit and inquire into the condition of *Salem Church* made report through Dr. H. Magill that a very hopeless condition of things existed in that church.

It was resolved that the report be received and adopted and that the Committee on Church Erection be authorized, in co-operation with the Session of the Church, and with its assent, to offer the property for sale."

94. MINUTES PRESBYTERY OF PITTSBURG PRESBYTERIAN CHURCH, U. S. A., April 9, 1907. "The trustees of Presbytery were authorized to sell the property at 1526 Pen. Ave., Pittsburgh (Old Fourth Church property), having a frontage of 16 feet more or less for \$1200.00 per foot for cash.

In the union of the First Reformed Congregation of Pittsburgh and the Tabernacle Presbyterian Congregation of Pittsburgh, July 16, 1906, the following was the action of Presbytery in regard to the properties.

The property of the First Reformed congregation situate at the corner of Baum St. and Euclid Ave., shall be owned by the united congregation and shall be used by it for church purposes.

The property of the Tabernacle Presbyterian congregation at the corner of Collins Ave. and Station Streets shall be sold and

the proceeds invested; and the interest or income only shall be used for the prosecution of every form of aggressive church work, under the joint direction of the Session and the Board of Trustees of the united congregation; and no part of the principal shall be used except with the consent of the united congregation obtained at a congregational meeting regularly called."

95. ADOPTION OF ENABLING ACTS, MINUTES OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, 1907: Beginning with line 10, page 140, of said Minutes, with the words, 'The Committee on Legal matters,' ending with line 12, page 140, with the words, 'as follows,' and reading as follows:

"The Committee on Legal Matters connected with Reunion presented its Report, which was accepted, amended, adopted, and is as follows":

96. PART OF REPORT ABOVE, BEING RECOMMENDATIONS CONCERNING, AND A PREAMBLE TO THE ENABLING ACTS, Minutes General Assembly Presbyterian Church, 1907: Beginning with the line 7, page 141, of said Minutes, with the words, 'This Assembly,' ending with line 23, page 142, thereof, with the words 'as follows,' and reading as follows:

"4. This Assembly referred to this Committee the whole matter of the Enabling Acts, prepared and recommended by the Committee of Church Cooperation and Union, and made necessary by the Reunion in order to consolidate or readjust the boundaries of certain Presbyteries and Synods of the reunited Church, which before the reunion effected May 24, 1906, occupied the same territory in whole or in part.

To this subject your Committee has devoted particular care and attention.

As to matters of mere phraseology or form, involving the correction of clerical errors, not matters of substance, we recommend:

1. That in publishing and issuing the Enabling Acts which may be adopted, the Stated Clerk is hereby directed and authorized to make any necessary obvious verbal corrections not affecting matters of substance.

2. As to the Enabling Acts themselves, involving the rearrangement of Presbyterial and Synodical boundaries, the dates of convening the judicatories to be erected, and the names whereunder they are to be known, your Committee has received communications from authoritative sources resulting in some verbal changes, and some of substance, in the proposed Acts as below noted.

We are of the opinion that there should be adopted by the Assembly a General Preamble to be deemed a part of every Enabling Act, and as well a general Final Declaration similarly to be

deemed a part of every Enabling Act, to be expressive of the intent of the reunited Church and interpretative of the Acts themselves.

3. General Preamble.—

WHEREAS, The General Assembly of the Presbyterian Church in the U. S. A. has, by virtue of the Reunion and Union effected May 24, 1906, exclusive of jurisdiction over all the Synods and Presbyteries of the Reunited Church; and

WHEREAS, By the Plan of Reunion and Union and the Concurrent Declarations thereunder adopted, it was left to this General Assembly to consolidate, or otherwise deal with such Synods and Presbyteries as should upon consummation of the Reunion, be found to cover the same territory in whole or in part; and,

WHEREAS, After conference with the Synods and Presbyteries affected, the Committee on Church Cooperation and Union has recommended certain Enabling Acts framed pursuant to the directions of the General Assembly of 1906:

Now this Assembly, having duly considered the said Acts, in order that the intention of the reunited church in enacting the same shall be clearly set forth, doth hereby solemnly declare:

That the General Assembly of the Presbyterian Church in the U. S. A., in promulgating the subjoined Enabling Acts, enjoins upon each and every Presbytery and Synod therein referred to and thereby affected, and which may hold or be entitled to any funds or property impressed with any trust, or otherwise, to transfer, each to its respective successor—judicatory, as by said Enabling Acts constituted, all such funds or property according to law.

4. We recommend the following as the Final Declaration to follow the said Several Acts:

The General Assembly of the Presbyterian Church in the U. S. A., in the promulgation of the several foregoing Enabling Acts, solemnly declares its intention and purpose that every Presbytery or Synod, erected or constituted by virtue of any said Acts, shall in all respects have, hold, exercise and administer as successor, every right, title, trust or obligation possessed by or charged upon the former Presbyteries or Synods, of which it is above enacted and declared to be the successor.

We recommend the enactment by the Assembly of the said Enabling Acts, which with the amendments therein made severally read as follows:

96. ENABLING ACTS, AS RELATING TO THE SYNOD OF KANSAS OF THE REUNITED CHURCH. Minutes General Assembly Presbyterian Church, 1907: Beginning with line 33, page 151, with the words, 'Synod of Kansas,' ending with line 29, page 152, thereof, with the words, 'o'clock, noon,' and reading as follows:

"SYNOD OF KANSAS.

Be it and it is hereby enacted by the General Assembly:

I. That the Synod of Kansas—A is hereby united with the Synod of Kansas, which latter Synod is continued and shall include all the Presbyteries of both Synods within the State of Kansas and all the ministers and churches under the care of said Presbyteries; and the Synod of Kansas as thus constituted is hereby declared to be the legal successor of the Synod of Kansas—A, and as such is entitled to the possession and enjoyment of all the rights and franchises and liable to the performance of all the duties of said Synod.

II. That the Synod of Kansas as thus constituted shall meet on the second Thursday of October, 1907, in the Presbyterian Church of Emporia, at 7:30 o'clock P. M., and shall be opened with a sermon by the Rev. J. S. Glendenning, D. D. (or in his absence, by the Rev. J. C. Moore), who shall preside until a new Moderator be chosen.

III. That the Presbyteries of the Synod of Kansas—A located within the bounds of the State of Kansas be and are hereby dissolved, viz., the Presbyteries of Fort Scott, Kansas City, and Wichita, and their churches and ministers are hereby transferred and assigned to the Presbyteries of the Synod of Kansas within whose bounds they reside or are located.

IV. That all the records, papers and funds of the Synod of Kansas—A and its above-named Presbyteries be and are hereby directed to be delivered to the Stated Clerk of the Synod of Kansas, for such disposition as to the Synod shall seem proper.

V. That the Presbytery of Nebraska of the Synod of Kansas—A is hereby dissolved; that its churches and ministers are hereby transferred and assigned to the Presbyteries of the Synod of Nebraska within whose bounds they reside or are located, and that its records, papers and funds are hereby directed to be delivered to the Stated Clerk of the Synod of Nebraska, for such disposition as to the Synod shall seem proper.

VI. That the Presbytery of Rocky Mountain of the Synod of Kansas—A is hereby dissolved; that its churches and ministers are hereby transferred and assigned to the Presbyteries of the Synod of Colorado within whose bounds they reside or are located, and that its records, papers and funds be delivered to the Stated Clerk of the Synod of Colorado, for such disposition as to the Synod shall seem proper.

VII. That this Act shall take effect on June 1, 1907, at 12 o'clock, noon."

97. ENABLING ACTS, AS RELATING TO THE SYNOD OF MISSOURI, Minutes of General Assembly Presbyterian Church, 1907: Beginning with line 10, page 157 of said Minutes, with the words, 'Synod of Missouri,' ending with line 18, page 160, thereof, with the words, 'at 10, A. M.,' and reading as follows.

"SYNOD OF MISSOURI."

(Note.—The Joint Committees of the Synods of Missouri desire to insert in the following Enabling Act, Section III, the names of churches and ministers in each Presbytery.)

Be it enacted by the General Assembly:

I. That the Synod of Missouri U. S. A. and the Synod of Missouri—A (formerly Cumberland Presbyterian), both subject to the jurisdiction of this General Assembly, are hereby united and constituted into the Synod of Missouri, which Synod shall include all the Presbyteries of both Synods within the State of Missouri and all the ministers and churches under the care of said Presbyteries; and the Synod of Missouri as thus united and constituted is hereby declared to be the legal successor of the Synod of Missouri and the Synod of Missouri—A, and as such is entitled to the possession and enjoyment of all the rights and franchises, obligations, records, membership and property, and liable to the performance of all the duties of those Synods.

II. The Synod as thus united and constituted shall meet on the third Tuesday of October, 1907, at 7:30 P. M., in the Second Presbyterian Church of Kansas City, Mo., and shall be opened with a sermon by the Rev. W. C. Atwood (or in his absence by the oldest minister present), who shall preside until a Moderator is chosen.

III. That the Synod of Missouri as herein united be and is hereby divided into ten Presbyteries, viz.: Carthage, Iron Mountain, Kansas City, Kirksville, McGee, Ozark, St. Joseph, St. Louis, Salt River and Sedalia, whose territory and whose jurisdiction of ministers and churches at the time of organization shall be as follows:

(Here follows a description of the territory of the several Presbyteries by metes and bonds.) * * *

IV. That beginning July 1, 1907, all records of the Presbyteries of the Synod of Missouri, as then organized, and of their ecclesiastical predecessors, shall become the property of the Synod of Missouri; and that, so far as then or later obtainable, the original manuscript volumes of the records of all Missouri Synodical and Presbyterian bodies, or printed copies thereof, be deposited in a fireproof vault in Missouri Valley College, there to be kept for the Synod under the custody of the College Librarian (and subject to the directions of the Synod).

V. That all Treasurers and Trustees heretofore acting for or reporting to any of the Presbyteries hereinafter named in holding or managing general or special funds or trusts, shall hereafter report as directed below; and shall be subject to all orders and supervision of the respective new Presbyteries named, to the same extent and in the same manner as they were subject to the Presbyteries to which they heretofore reported, viz.: Such officers of the Presbyteries of

Hannibal and Kirksville shall hereafter report to the new Presbytery of Kirksville; of the Presbytery of Salt River to the new Presbytery of Salt River; of the Presbytery of Chillicothe—A and McGee to the new Presbytery of McGee; of the Presbyteries of Platte and Platte—A to the new Presbytery of St. Joseph; of the Presbyteries of Kansas City and Lexington to the new Presbytery of Kansas City; of the Presbytery of New Lebanon to the new Presbytery of Sedalia; of the Presbyteries of St. Louis and St. Louis—A to the new Presbytery of St. Louis; of the Presbytery of West Prairie to the new Presbytery of Iron Mountain; of the Presbyteries of Ozark, Ozark—A, Springfield and West Plains, to the new Presbytery of Ozark; and of the Presbytery of Neosho—A to the new Presbytery of Carthage.

VI. That the new Presbyteries above named, within the limits and over the ministers and churches in this Act assigned them, shall assume and exercise jurisdiction; that except as otherwise provided in the foregoing sections, they shall succeed to all ecclesiastical, civil and property rights of the Presbyteries heretofore exercising jurisdiction over said territory, and that they shall, within the said limits, have and hold the same, with all the rights, privileges and immunities thereto belonging or in any wise appertaining, so far as they may lawfully so do.

VII. That, until their successors are elected, Ruling Elder W. T. Baird shall act as Moderator, the Rev. John H. Miller as Stated Clerk and the Rev. J. W. Mitchell as Temporary Clerk of the Synod of Missouri, and the Committees, Treasurer and other officers of the former Synod of Missouri and the Synod of Missouri—A are hereby continued to report to the new Synod.

VIII. That each of the newly elected Presbyteries of the Synod of Missouri, except the Presbytery of White River, meet on the third Tuesday of June, 1907, at the hour of 10 A. M., and at the places named below, to organize, to elect Stated Clerks and Committees, and otherwise to arrange for the further conduct of their business; and that, unless otherwise voted, the persons named below shall serve or act as officers until their successors are elected as the stated fall meetings of their respective Presbyteries, viz.: (Here follows the names of the Presbyteries, the place of their convening, the name of the convenor of each, and the name of the Clerk for each.)

IX. That the following ministers and churches are hereby transferred to the Presbyteries within whose bounds they are located, viz: Ministers—Nathaniel Chesnut, E. J. Nugent, J. R. Trett, and W. F. Grundy; Churches—Eureka Springs, Harris, Trace Valley, Mammoth Spring, Bethel, Mt. Olivet, Ark.; and Antioch, at Cornith, Kansas.

X. This Act shall take effect on June 18, 1907, at 10 A. M."

98. DENVER RESOLUTION, Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1907; Beginning with line 18, page 175 of said Minutes, with the words, 'The Special Committee,' ending with line 13, page 178, with the words, 'unanimously adopted,' and reading as follows:

"The Special Committee on Church Co-operation and Union present the following statement, through the Chairman, the Rev. W. H. Roberts, D. DD., being a deliverance on the independence of the Church in the matter of decisions in doctrine:

The General Assembly of the Presbyterian Church in the United States of America recognizes the authority of the civil courts in all matters relating to property rights, and submits to the final decisions of the highest courts in determining the ownership of property, even when the grounds of the decisions may not be acceptable.

According to the relations between Church and State which have arisen and have been maintained since the adoption of the Constitution of the United States, which are commonly summarized in the phrase, 'The separation of Church and State,' every ecclesiastical organization does claim the right to have its decisions concerning its own doctrinal beliefs and teachings accepted by the civil courts as authoritative, even in cases where the disposition of property may be determined by such ecclesiastical decisions.

The relations of the Church and the State in the United States have been so harmonious, and so conducive to the good of both institutions, since the adoption of the principle which asserts the supremacy of the civil courts when acting within their well-defined sphere, and the supremacy of the Church courts, when acting within their equally well-defined sphere that when the civil courts discuss doctrinal questions and set aside or misapply the decisions of Church courts on the same doctrinal questions, all churches in our country may feel warranted in expressing alarm lest this benevolent principle be impaired, and can rightfully and without discourtesy to the State reaffirm their independence in determining their own doctrinal beliefs.

The General Assembly of the Presbyterian Church in the United States of America therefore, feels justified in making the following deliverance concerning the doctrinal basis on the union consummated in 1906 between the Cumberland Presbyterian and the Presbyterian Church in the United States of America:

1. This General Assembly reaffirms the declarations made by the General Assembly sitting in Des Moines, Iowa, May, 1906, and particularly in the first and second declarations, relating to the doctrinal assent required of all ministers, ruling elders and deacons, as set forth in the second declaration, both of which are herewith reannounced:

"1. That in the Presbyterian Church no acceptance of the doctrines of the Church is required of any communicant beyond a personal faith in Jesus Christ as Son of God and Saviour of the world, and a sincere acceptance of him as Lord and Master.

2. That ministers, ruling elders and deacons, in expressing approval of the Westminster Confession of Faith as revised in 1903, are required to assent only to the system of doctrine contained therein, and not to every particular statement in it; and inasmuch as the two Assemblies meeting in 1904 did declare that there was then a sufficient agreement between the systems of doctrine contained in the Confessions of the two Churches to warrant the union of the two churches, therefore the change of doctrinal standards resulting from the union involves no change of belief on the part of any who were ministers, ruling elders or deacons in the Cumberland Presbyterian Church. Further, this Assembly specifically declares that since the revision of 1903, by which the Confession was amended, by a change of its text, by a declaratory statement, and by additions, it is no longer allowable to interpret our system of doctrine in any fatalistic sense, nor are we willing to admit that such fatalistic interpretation was ever warranted, whatever misapprehension may have existed in the minds of any person."

2. This General Assembly further declares, with respect to the two declarations herewith reannounced, that the assertions of fact therein do not make, and were not intended to make, any concession to any class of persons or officers that by virtue of the Union and Reunion had become members of the United Church; but said declarations simply relate facts that had been true in the Presbyterian Church from the organization of the General Assembly, in 1879, and are still true as setting forth the doctrinal relations of all communicants and of all office bearers without exception.

Moreover, this General Assembly, representing the Reunited Church, affirms that the same doctrinal relationship of members and office-bearers obtained in the Cumberland Presbyterian Church prior to the Union, as shown by its Confession.

It is the 'system of doctrine,' rather than the Confession of Faith, that binds the members of our Church into unity in doctrinal beliefs. The Confession of Faith contains the system of doctrine, but other beliefs also, not necessarily belonging to the system of doctrine. Whether a 'particular statement' in the Confession of Faith constitutes an essential part of the 'system of doctrine' can be determined authoritatively only by the General Assembly. In this respect the Constitution of the Cumberland Presbyterian Church was identical with that of the Presbyterian Church.

3. This General Assembly also declares that it was the judgment of the two General Assemblies that met in 1904 and 1906 that the effect of the revision of the Westminster Confession of Faith made in 1903, was the removal of ground for asserting that the Confession of Faith was in any sense fatalistic. The two systems of doctrine were declared to be substantially the same. What was meant by the assertion, that there was brought about by the revision of 1903 a mutual recognition that 'such agreement now exists between the systems of doctrine contained in the Confession of Faith of the two Churches as to warrant this union—a union

honoring alike to both, was, that there was such identity of doctrinal belief in the two Churches that no one in either Church who sincerely accepted and adopted either Confession of Faith as containing the system of doctrine taught in the Holy Scriptures, could be justly or logically characterized as in disagreement with the doctrinal standards.

No authority other than the General Assembly could in either Church before the Union, or can now in the united Church, determine the exact contents of the 'system of doctrine.' Judgments on this subject are pronounced only as occasion for them arises. Therefore, the contents of the 'system of doctrine,' always have been in both Churches, and are now in the reunited Church, not fully stated and adjudicated. But the two General Assemblies and the majority of all the Presbyteries were convinced that the system of doctrine contained in the two Confessions of Faith were substantially the same, and they approved of a union that did not involve or require any change of belief on the part of any who were loyal to the Confessions of Faith of their respective Churches; otherwise, the union could not have been "honoring alike to both." The Declaratory Statement and the accompanying footnotes to the Third and Tenth Chapters are explanatory, and not contradictory, and taken together, along with the added Chapters, they assert the correlated truths of the sovereignty of God and the freedom of man, found both in the Holy Scriptures and in the Confessions of all Presbyterian Churches.

This General Assembly further declares, with profound gratitude to God, that none of the supposed differences between the two systems of doctrine have appeared anywhere within the jurisdiction of the Church within the past three years, during which period the two elements of the Church have lived and wrought together in perfect harmony; and thus the Providence of God confirms our judgment as to the substantial identity of the systems of doctrine contained in the Two Confessions of Faith.

The deliverance was unanimously adopted."

99. REPORT OF COMMITTEE ON EDUCATION, Minutes of the Synod of Kansas of the Cumberland Presbyterian Church, 1905; which reads as follows:

'The Committee on Education, believe our church is in a great measure meeting the demands of the times by maintaining institutions as Missouri Valley College, and it is to the work of this Christian College we would call your attention.

We note first, evidences of increased usefulness, second, that harmony prevails among its friends and helpers, third, that the management of the institution was never better than now, fourth, that great improvements are being made, and they are possible by the generosity of those who have the matter upon their hearts.

We recommend that you urge the pastors of the Kansas Synod to use every reasonable measure to get our boys and girls to attend our own schools. That you heartily endorse the present management of this College. That you adopt the following resolution:

"Resolved, that in view of the approaching union of the Cumberland Presbyterian Church and the Presbyterian Church in U. S. A., the Board Trustees of Missouri Valley College be and hereby are instructed, directed, authorized and empowered to take all necessary and proper steps and adopt all necessary and proper measures as they may be advised to secure the title of the College together with the title of its endowment and all its other property, real, personal and mixed, to the united church, and also to secure all its rights, immunities, privileges, and franchises, now enjoyed by it in its relation to the united church, so that the institution shall preserve its integrity and maintain its policy with the right and freedom to modify and formulate its policies as to it shall seem proper and necessary for all the best interests of the institution and the church under the varying vicissitudes of the future.

(Signed): J. E. Aubrey,

Chairman of Committee."

100. MINUTES of KANSAS SYNOD OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, 1909, Beginning with line 33, page 12 of said minutes, with the words, 'the Moderator,' ending with line 38, page 12 thereof with the words, 'in the said college,' and reading as follows:

"The Moderator, H. G. Mathis, R. Thomsen, Wm. Foulkes, and Ruling Elder J. B. Larimer were appointed a committee to represent the immediate interests of Missouri Valley College and to take such action as may be necessary to protect the interest of this Synod in said college."

VI.

Evidence offered under Paragraph 4, of Stipulation No. 2, above.

a. The plaintiffs offer the following evidence under paragraph 4, of stipulation No. 2, from the Constitution of the Presbyterian Church in the United States of America.

1. From the Confession of Faith thereof.

CHAPTER III * See Declaratory Statement, p. 138b.

OF GOD'S ETERNAL DECREE.

I. God from all eternity did by the most wise and holy counsel of his own will, freely and unchangably ordain whatever comes to pass; yet so as thereby neither is God the author of sin, nor is violence offered to the will of the creatures, nor is the liberty or contingency of second causes taken away, but rather established.

II. Although God knows whatsoever may or can come to pass upon all supposed conditions; yet hath he not decreed anything because he foresaw it as future, or as that which would come to pass upon such conditions.

VIII. The doctrine of this high mystery of predestination is to be handled with special prudence and care, that men attending the will of God revealed in his Word, and yielding obedience thereunto may, from the certainty of their effectual vocation, be assured of their eternal election. So shall this doctrine afford matter of praise, reverence, and admiration of God; and of humility, diligence, and abundant consolation, to all that sincerely obey the gospel.

CHAPTER IX. OF FREE WILL.

I. God hath endued the will of man with that natural liberty that it is neither forced, nor by any absolute necessity of nature, determined to good or evil.

CHAPTER XX. OF CHRISTIAN LIBERTY AND LIBERTY OF CONSCIENCE.

II. God alone is lord of the conscience, and hath left it free from the doctrines and commandments of men which are in any thing contrary to his Word, or beside it, in matters of faith or worship. So that to believe such doctrines, or to obey such commandments of our conscience, is to betray true liberty of conscience; and the requiring of an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience and reason also.

CHAPTER XXXI. Of Synods and Councils.

III. All synods or councils since the apostles' time, whether general or particular, may err, and many have erred; therefore they are not to be made the rule of faith or practice, but be used as a help to both.

For information, in the consideration of the Plan of Reunion and Union, submitted to the Presbyteries of the General Assembly the following matters added.

THE REVISED WESTMINSTER CONFESSION.

Amendments of 1903.

(Referred to in "Concurrent Declarations," p. 63a.)

1. THE CHANGED SECTIONS.

"In addition to the new chapters and the Declaratory Statement, the following changes in the Confession of Faith have been made, viz:

"1. Footnotes have been appended to Chapter III and to Chapter X., Section III, reading "See Declaratory Statement, p. 138b."

"2. Chapter XVI, Section VII, has been changed so as to read:

"VII. Works done by unregenerate men, although for the matter of them they may be things which God commands, and in themselves praiseworthy and useful, and although the neglect of

such things is sinful and displeasing unto God; yet, because they proceed not from a heart purified by faith; nor are done in a right manner, according to His Word; nor to a right end, the glory of God; they come short of what God requires and do not make any man meet to receive the grace of God.

"3. Chapter XXII, Section III has been amended by striking out the last sentence, viz.,

"Yet it is a sin to refuse an oath touching anything that is good and just, being imposed by lawful authority."

"4. Chapter XXV, Section VI, has been changed so as to read:

"VI. The Lord Jesus Christ is the only head of the church, and the claim of any man to be the vicar of Christ and the head of the church, is unscriptural, without warrant in fact, and is a usurpation dishonoring to the Lord Jesus Christ."

II. THE DECLARATORY STATEMENT.

"While the ordination vow of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception of the Confession of Faith only as containing the system of Doctrine taught in the Holy Scriptures, nevertheless, seeing that the desire has been formally expressed for a disavowal by the church of certain inferences drawn from statements in the Confession of Faith, and also for a declaration of certain aspects or revealed truth which appear at the present time to call for more explicit statement, therefore the Presbyterian Church in the United States of America does authoritatively declare as follows:

First, with reference to Chapter III of the Confession of Faith; that concerning those who are saved in Christ, the doctrine of God's eternal decree is held in harmony with the doctrine of His love to all mankind; His gift of His Son to be the propitiation for the sins of the whole world, and His readiness to bestow His saving grace on all who seek it. That concerning those who perish, the doctrine of God's eternal decree is held in harmony with the doctrine that God desires not the death of any sinner, but has provided in Christ a salvation sufficient for all, adapted to all, and freely offered in the Gospel to all; that men are fully responsible for their treatment of God's gracious offer; that His decree hinders no man from accepting that offer; and that no man is condemned except on the ground of his sin.

"Second, with reference to Chapter X, Section 3, of the Confession of Faith, that it is not to be regarded as teaching that any who die in infancy are lost. We believe that all dying in infancy are included in the election of grace, and are regenerated and saved by Christ through the Spirit, who works when and where and how He pleases."

III. THE NEW CHAPTERS.

(Added to the Westminster Confession of Faith, in 1903, as a part of the Revision).

PREAMBLE.

Whereas, it is desirable to express more fully the doctrine of the church concerning the Holy Spirit, Missions, and the Love of God for all men, the following chapters are added to the Confession of Faith:

Chapter XXXIV. Of the Holy Spirit.

"I. The Holy Spirit, the third person in the Trinity, proceeding from the Father and the Son, of the same substance and equal in power and glory, is, together with the Father and the Son, to be believed in, loved, obeyed, and worshiped throughout all ages.

II. He is the Lord and Giver of life, everywhere present in nature, and is the source of all good thoughts, pure desires and holy counsels in men. By Him the Prophets were moved to speak the Word of God, and all writers of the Holy Scriptures inspired to record infallibly the mind and will of God. The dispensation of the Gospel is especially committed to Him. He prepares the way for it, accompanies it with His persuasive power, and urges its message upon the reason and conscience of men, so that they who reject its merciful offer are not only without excuse, but are also guilty of resisting the Holy Spirit.

III. The Holy Spirit, whom the Father is ever willing to give to all who ask Him, is the only efficient agent in the application of redemption. He convicts men of sin, moves them to repentance, regenerates them by His grace, and persuades and enables them to embrace Jesus Christ by faith. He unites all believers to Christ, dwells in them as their Comforter and Sanctifier, gives to them the Spirit of Adoption and Prayer, and performs all those gracious offices by which they are sanctified and sealed unto the day of redemption.

IV. By the indwelling of the Holy Spirit all believers being vitally united to Christ, who is the head, are thus united to one another in the Church, which is His body. He calls and anoints ministers for their holy office, qualifies all other officers in the Church for their special work, and imparts various gifts and graces to its members. He gives efficiency to the Word, and to the ordinances of the Gospel. By Him the Church will be preserved, increased until it shall cover the earth, purified, and at least made perfectly holy in the presence of God.

Chapter XXV. Of the Love of God and Missions.

"I. God, in infinite and perfect love, having provided in the covenant of grace, through the mediation and sacrifice of the Lord Jesus Christ, a way of life and salvation, sufficient for and adapted to the whole lost race of man, doth freely offer this salvation to all men in the Gospel.

"II. In the Gospel God declares his love for the world and His desire that all men should be saved, reveals fully and clearly the only way of salvation; promises eternal life to all who truly repent and believe in Christ; invites and commands all to embrace the

offered mercy; and by His spirit accompanying the Word pleads with men to accept His gracious invitation.

"III. It is the duty and privilege of every one who hears the Gospel immediately to accept its merciful provisions; and they who continue in impenitence and unbelief incur aggregated guilt and perish by their own fault.

"IV. Since there is no other way of salvation than that revealed in the Gospel, and since in the divinely established and ordinary method of grace faith cometh by hearing the Word of God, Christ hath commissioned His Church to go into all the world and to make disciples of all nations. All believers are, therefore, under obligation to sustain the ordinances of religion where they are already established, and to contribute by their prayers, gifts, and personal efforts, to the extension of the kingdom of Christ throughout the whole earth."

2. FORM OF GOVERNMENT OF SAME.

CHAPTER I.

Preliminary Principles.

The Presbyterian Church in the United States of America, in presenting to the Christian public the system of union, and the form of government and discipline which they have adopted, have thought proper to state, by way of introduction a few of the general principles by which they have been governed in the formation of the plan. This, it is hoped, will, in some measure, prevent those rash misconstructions, and uncandid reflections, which usually proceed from an imperfect view of any subject; as well as make the several parts of the system plain, and the whole perspicuous and fully understood.

They are unanimously of opinion:

I. That 'God alone is Lord of the conscience; and hath left it free from the doctrine and commandments of men, which are in any thing contrary to his word, or beside it in matters of faith or worship;' therefore they consider the rights of private judgment, in all matters that respect religion, as universal and unalienable; they do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and, at the same time, be equal and common to all others.

II. That, in perfect consistency with the above principle of common right, every Christian Church, or union or association of particular churches, is entitled to declare the terms of admission into its communion, and the qualifications of its ministers and members, as well as the whole system of its internal government which Christ hath appointed; that, in the exercise of this right they may, notwithstanding, err, in making the terms of communion either too lax or too narrow; yet even in this case, they do not infringe upon the liberty, or the rights of others, but only make an improper use of their own.

III. That our blessed Saviour, for the edification of the visible Church, which is his body, hath appointed officers, not only

to preach the gospel and administer the Sacraments but also to exercise discipline, for the preservation both of truth and duty; and, that it is incumbent upon these officers, and upon the whole Church, in whose name they act, to censure or cast out the erroneous and scandalous; observing, in all cases, the rules contained in the word of God.

* * * * *

VII. That all church power, whether exercised by the body in general, or in the way of representation by delegated authority, is only ministerial and declarative; that is to say, that the Holy Scriptures are the only infallible rule of faith and manners; that no church judicatory ought to pretend to make laws, to bind the conscience in virtue of their own authority; and that all their decisions should be founded upon the revealed will of God. Now though it will easily be admitted, that all synods and councils may err, through the frailty inseparable from humanity; yet there is much greater danger from the usurped claim of making laws already made, and common to all who profess the gospel, although this right, as necessity requires in the present state, be lodged with fallible men.

CHAPTER II.

* * * * *

OF THE CHURCH.

I. Jesus Christ, who is now exalted far above all principality and power, hath erected, in this world, a kingdom, which is his Church.

II. The universal Church consists of all those persons, in every nation, together with their children, who make profession of the holy religion of Christ, and of submission to his laws.

III. As this immense multitude cannot meet together in one place, to hold communion, or to worship God, it is reasonable and warranted by Scripture example, that they should be divided into many particular churches.

IV. A particular church consists of a number of professing Christians, with their offspring, voluntarily associated together, for divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.

CHAPTER VIII.

OF CHURCH GOVERNMENT, AND THE SEVERAL KINDS OF JUDICATORIES.

I. It is absolutely necessary that the government of the Church be exercised under some certain and definite form. And we hold it to be expedient, and agreeable to Scripture and the practice of the primitive Christians, that the Church be governed by congregational, presbyterial, and synodical assemblies. In full consistency with this belief, we embrace, in the spirit of charity, those Christians who differ from us, in opinion, or in practice, on these subjects.

* * * * *

CHAPTER IX. OF THE CHURCH SESSION.

I. The church session consists of the pastor or pastors, and ruling elders of a particular congregation.

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III. The pastor of the congregation shall always be the moderator of the session; except, when, for prudential reasons, it may appear advisable that some other minister should be invited to preside; in which case the pastor may, with the concurrence of the session, invite such other ministers as they may see meet, belonging to the same presbytery, to preside in that case. The same expedient may be adopted in case of the sickness or absence of the pastor.

* * * * *

VI. The church session is charged with maintaining the spiritual government of the congregation; for which purpose they have power to inquire into the knowledge and Christian conduct of the members of the church; to call before them offenders and witnesses, being members of their own congregation, and to introduce other witnesses, where it may be necessary to bring the process to issue, and when they can be procured to attend; to receive members into the church; to admonish, to rebuke, to suspend or exclude from the Sacraments, those who are found to deserve censure; to concert the best measures for promoting the spiritual interests of the congregation; to supervise the Sabbath School and the various societies or agencies of the congregation; and to appoint delegates to the higher judicatories of the Church.

VII. Subject to the provisions of the Directory for Worship the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. They shall also have exclusive authority over the uses to which the church buildings may be put, but may temporarily delegate the determination of such uses to the body having management of the temporal affairs of the church, subject to the superior authority and direction of the session.

VIII. The pastor has power to convene the session when he may judge it requisite; and he shall always convene them when requested to do so by any two of the elders. The session shall also convene when directed so to do by the presbytery.

IX. Every session shall keep a fair record of its proceedings which record shall be, at least once in every year, submitted to the inspection of the presbytery.

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CHAPTER X. OF THE PRESBYTERY.

I. The church being divided into many separate congregations, these need mutual counsel and assistance in order to preserve soundness of doctrine, and regularity of discipline, and to enter into common measures for promoting knowledge and re-

ligion, and for preventing infidelity, error, and immorality. Hence arise the importance and usefulness of presbyterial and synodical assemblies.

II. A presbytery consists of all the ministers, in number not less than five, and one ruling elder from each congregation within a certain district; but in exceptional cases a presbytery may be organized within the boundaries of existing presbyteries, in the interests of ministers and churches speaking other than the English language, or of a particular race; but in no case without their consent; and the same rule apply to synods.

* * * * *

VIII. The presbytery has power to receive and issue all appeals, complaints, and references, that may be regularly brought before it from church sessions, provided, that cases may be transmitted to Judicial Commissions as prescribed in the Book of Discipline; to examine and license candidates for the holy ministry; to ordain, install, remove, and judge ministers; to examine and approve or censure the records of church sessions; to resolve questions of doctrine or discipline seriously and reasonably proposed; to condemn erroneous opinions which injure the purity or peace of the Church; to visit particular churches, for the purpose of inquiring into their state, and redressing the evils that may have arisen in them; to unite or divide congregations, at the request of the people, or to form or receive new congregations, and in general to order whatever pertains to the spiritual welfare of the churches under their care.

IX. It shall be the duty of the presbytery to keep a full and fair record of their proceedings, and to report to the synod, every year, licensures, ordinations, the receiving or dismissing of members, the removal of members by death, the union or division of congregations, or the formation of new ones, and in general, all the important changes which may have taken place within their bounds in the course of the year.

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CHAPTER XI. OF THE SYNOD.

I. As a presbytery is a convention of the bishops and elders within a certain district; so a synod is a convention of the bishops and elders within a larger district, including at least three presbyteries. The synod may be composed, at its own option, with the consent of a majority of its presbyteries, either of all the bishops and an elder from each congregation in its district, with the same modifications as in the presbytery, or of equal delegations of bishops and elders, elected by the presbyteries on a basis and in a ratio determined in like manner by the synod and its presbyteries.

II. Any seven ministers, belonging to the synod, who shall convene at the time and place of meeting, with as many elders as may be present, shall be a quorum to transact synodical business; provided not more than three of the said ministers belong to one presbytery.

* * * * *

IV. The Synod has power to receive and issue all appeals, complaints, and references, that are regularly brought before it from the presbyteries, and to decide finally in such cases all questions that do not affect the doctrine or Constitution of the Church, provided, that cases may be transmitted to Judicial Commissions as prescribed in the Book of Discipline; to decide on all references made to them; its decisions on appeals, complaints, and references, which do not affect the doctrine or Constitution of the Church, being final; to review the records of presbyteries, and approve or censure them; to redress whatever has been done by presbyteries contrary to order; to take effectual care that presbyteries observe the Constitution of the Church; to erect new presbyteries, and to unite or divide those which were before erected; generally to take such order with respect to the presbyteries, sessions and people under their care, as may be in conformity with the Word of God and the established rules, and which tend to promote the edification of the Church; and, finally, to propose to the General Assembly, for its adoption, such measures as may be of common advantage to the whole Church.

* * * * *

VI. It shall be the duty of the synod to keep full and fair records of its proceedings, to submit them annually to the inspection of the General Assembly, and to report to the Assembly the number of its presbyteries, and of the members and alterations of the presbyteries.

CHAPTER XII.

OF THE GENERAL ASSEMBLY.*

(*Foot-note: The radical principles of Presbyterian Church government and discipline are: That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically, the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united; that is, a majority should govern; and consequently that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole church. For these principles and this procedure, the example of the apostles, and the practice of the primitive Church, are considered as authority. See Acts xv. 1-29; xvi. 4, and the proofs adduced under the last three chapters).

I. The general Assembly is the highest judicatory of the Presbyterian Church. It shall represent, in one body, all the particular churches of this denomination; and shall bear the title of THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

II. The General Assembly shall consist of an equal delegation of bishops and elders from each presbytery, in the following proportion; viz: each presbytery consisting of not more than twenty

ty-four ministers, shall send one minister and one elder; and each presbytery consisting of more than twenty-four ministers, shall send one minister and one elder for each additional twenty-four ministers, or for each additional number of ministers not less than twelve; and these delegates so appointed, shall be styled, Commissioners to the General Assembly. * * *

IV. The General Assembly shall receive and issue all appeals, complaints, and references, that affect the doctrine or Constitution of the Church, and are regularly brought before it from the inferior judicatories, provided, that cases may be transmitted to the Permanent Judicial Commission of the General Assembly as prescribed in the Book or Discipline. The General Assembly shall review the records of every synod and approve or censure them; it shall give its advice and instruction, in all cases submitted to it, in conformity with the Constitution of the Church; and it shall constitute the bond of union, peace, correspondence and mutual confidence among all our churches.

V. To the General Assembly also belongs the power of deciding in all controversies respecting doctrine and discipline; of re-proving, warning, or bearing testimony against error in doctrine, or immorality in practice, in any church, presbytery, or synod; of erecting new Synods when it may be judged necessary; of superintending the concerns of the whole Church; of corresponding with foreign Churches, on such terms as may be agreed upon by the Assembly and the corresponding body; or suppressing schismatical contentions and disputations; and, in general, of recommending and attempting reformation of manners, and the promotion of charity, truth, and holiness, through all the churches under their care.

VI. Before any overtures or enactments proposed by the Assembly to be established as rules regulative of the constitutional powers or presbyteries and synods, shall be obligatory upon the Church, it shall be necessary to transmit them to all the presbyteries, and to receive the returns of at least a majority of them, in writing, approving thereof, and such rules, when approved, shall be appended to the Constitution of the Church.

CHAPTER XIII.

OF ELECTING AND ORDAINING RULING ELDERS AND DEACONS.

I. Having defined the officers of the Church, and the judicatories by which it shall be governed, it is proper here to prescribe the mode in which ecclesiastical rulers should be ordained to their respective offices, as well as some of the principles by which they shall be regulated in discharging their several duties.

II. Every congregation shall elect persons to the office of ruling elder, and to the office of deacon, or either of them in the mode most approved and in use in that congregation. But in all cases the persons elected must be male members in full communion in the church in which they are to exercise their office. * * *

CHAPTER XXIV. OF AMENDMENTS.

I. Amendments or alterations of the Form of Government, Book of Discipline and Directory of Worship may be proposed by the General Assembly to the presbyteries, but shall not be obligatory on the Church unless a majority of all the Presbyteries approve thereof in writing.

II. Amendments or alterations of the Confession of Faith, and the larger and shorter Catechisms, may be proposed to the presbyteries by the General Assembly, but shall not be obligatory on the Church unless they shall be approved in writing by two-thirds of all the presbyteries, and agreed to and enacted by the General Assembly next ensuing, and the written votes of the presbyteries shall be returned to that Assembly.

III. Before any amendments or alterations of the Confession of Faith, or the Larger and Shorter Catechisms, proposed by the General Assembly shall be transmitted to the presbyteries, the General Assembly shall appoint—to consider the subject—a committee of ministers and ruling elders, in number not less than fifteen, of whom not more than two shall be from one Synod, and the committee shall report its recommendations to the General Assembly next ensuing, for action.

IV. No alterations of the provisions contained in this chapter for amending or altering the Confession of Faith, and the Larger and Shorter Catechisms, or of this fourth section shall be made, unless an Overture from the General Assembly submitting the proposed alterations, shall be transmitted to all the presbyteries, and be approved in writing by two-thirds of their number, and be agreed to and enacted by the General Assembly.

V. It shall be obligatory on the General Assembly to transmit to the presbyteries, for approval or disapproval, any Overture respecting amendments or alterations provided for in this chapter, which shall be submitted to the same General Assembly by one-third of all the presbyteries. In such cases the Overture shall be formulated and transmitted by the General Assembly receiving the same to the presbyteries for their action, subject, as to all subsequent proceedings, to the provisions of the foregoing sections.

VI. Whenever it shall appear to the General Assembly that any proposed amendments or alterations of the Form of Government, Book of Discipline and Directory for Worship, shall have received a majority vote of all the presbyteries, the General Assembly shall declare such amendments or alterations to have been adopted, and the same shall immediately go into effect.

VII. Nothing in this chapter shall be so construed as to affect the right of two-thirds of the presbyteries to propose amendments or alterations of the Confession of Faith, and the Larger and Shorter Catechisms, or of the General Assembly to agree to and enact the same."

3. FROM THE BOOK OF DISCIPLINE.

CHAPTER IX.

OF THE WAYS IN WHICH A CAUSE MAY BE CARRIED FROM A LOWER TO A HIGHER JUDICATORY.

70. All proceedings of the session, the presbytery, and the synod (except as limited by Chapter XI, Section 4, of the Form of Government), are subject to review by, and may be taken to, a superior judicatory, by General Review and Control, Reference, Complaint, or Appeal.

I. OF GENERAL REVIEW AND CONTROL.

71. All proceedings of the church shall be reported to, and reviewed by, the session, and by its order incorporated with its records. Every judicatory above a session shall review at least once a year, the records of the proceedings of the judicatory next below; and, if the lower judicatory shall omit to send up its records for this purpose, the higher may require them to be produced, either immediately, or at a specified time, as circumstances may determine.

72. In such review, the judicatory shall examine, first, whether the proceedings have been correctly recorded; second, whether they have been constitutional and regular; and third, whether they have been wise, equitable, and for the edification of the Church.

73. Members of a judicatory, the records of which are under review, shall not be allowed to vote thereon.

74. In most cases the superior judicatory may discharge its duty, by simply placing on its own records, and on those under review, the censure which it may pass. But irregular proceedings may be found so disreputable and injurious, that the inferior judicatory must be required to review and correct, or reverse them, and report, within a specified time, its obedience to the order; provided, however, that no judicial decision shall be reversed, unless regularly taken up on appeal.

75. If a judicatory is, at any time, well advised of any unconstitutional proceedings of a lower judicatory, the latter shall be cited to appear, at a specified time and place, to produce the records, and to show what it has done in the matter in question; after which, if the charge is sustained, the whole matter shall be concluded by the judicatory itself, or be remitted to the lower judicatory, with directions as to its disposition.

76. Judicatories may sometimes neglect to perform their duty, by which neglect heretical opinions or corrupt practices may be allowed to gain ground, or offenders of a gross character may be suffered to escape; or some part of their proceedings may have been omitted from the record, or not properly recorded. If, therefore, at any time, the superior judicatory is well advised of such neglects, omission, or irregularities on the part of the inferior judicatory, it may require its record to be produced, and shall either proceed to examine and decide the whole matter, as completely as if proper record had been made; or it shall cite the lower judicatory, and proceed as in the next preceding section.

II. OF REFERENCES.

77. A reference is a representation in writing, made by an inferior to a superior judicatory, of a judicial case not yet decided. Generally, however, it is more conducive to the public good that each judicatory should fulfill its duty by exercising its own judgment.

78. Cases which are new, important, difficult, or of peculiar delicacy, the decision of which may establish principles or precedents of extensive influence, on which the inferior judicatory is greatly divided, or on which for any reason it is desirable that a superior judicatory should first decide, are proper subjects of reference.

79. References are, either for mere advice, preparatory to a decision by the inferior judicatory, or for ultimate trial and decision by the superior; and are to be carried to the next higher judicatory. If for advice, the reference only suspends the decision of the inferior judicatory; if for trial, it submits the whole case to the final judgment of the superior.

80. In cases of reference, members of the inferior judicatory may sit, deliberate and vote.

81. A judicatory is not necessarily bound to give a final judgment in a case of reference, but may remit the whole case, either with or without advice, to the inferior judicatory.

82. The whole record of proceedings shall be promptly transmitted to the superior judicatory, and, if the reference is accepted, the parties shall be heard.

III. OF COMPLAINTS.

83. A Complaint is a written representation by one or more persons, subject and submitting to the jurisdiction of an inferior judicatory, to the next superior judicatory against a particular delinquency, action, or decision of such inferior judicatory in a non-judicial or administrative case. When a non-judicial or administrative case has been decided by a Judicial Commission of an inferior judicatory, sitting during an interval between the meetings of such judicatory, a complaint against the decision of the commission may be entered and prosecuted before a superior judicatory, in the same manner as if the decision had been rendered by the inferior judicatory; and if at least one-third of the members of the Commission, recorded as present when the decision was made, join in such complaint, the execution of the decision of the Commission shall be stayed until the final issue of the case by the next superior judicatory.

84. Written notice of Complaint, with the reasons therefor, shall be given, within ten days after the action was taken, to the Clerk, or, in the case of his death, absence, or disability, to the Moderator, of the judicatory complained of, who shall lodge it, with the records and all the papers pertaining to the case, with the Clerk of the superior judicatory, before the close of the second day of its regular meeting next ensuing the date of the reception of said notice.

85. Whenever a complaint is entered in a non-judicial or administrative case against a decision of a judicatory, by at least one-third of the members recorded as present when the decision was made, the execution of the decision shall be stayed until the final issue of the case by the next superior judicatory.

86. The complainant shall lodge his complaint, and the reasons therefor, with the Clerk of the superior judicatory before the close of the second day of its meeting next ensuing the date of the notice thereof.

87. If the higher judicatory finds that the Complaint is in order, and that sufficient reasons for proceeding to its determination have been assigned, the next step shall be to read the record of the lower judicatory as may be pertinent; then the parties shall be heard, and, after that, the judicatory shall proceed to consider and determine the case.

88. The effect of a complaint, in a non-judicial or administrative case, if sustained, may be the reversal, in whole or in part, of the action or decision complained of. When a complaint is sustained, the lower judicatory shall be directed how to dispose of the matter.

89. The parties to a Complaint shall be known, respectively as Complainant and Respondent—the latter being the judicatory complained of, which should always be represented by one or more of its number appointed for that purpose, who may be assisted by counsel.

90. Neither the complainant nor the members of the judicatory complained of shall sit, deliberate, or vote in the case.

91. Either of the parties to a Complaint may complain to the next superior judicatory, except as limited by Chapter XI, Section 4, of the Form of Government.

92. The judicatory against which a complaint is made shall send up its records, and all the papers relating to the matter of the complaint, and filed with the record; and, for failure to do this, it shall have power to make such orders, pending the production of the records and papers, and the determination of the complaint, as may be necessary to preserve the rights of all the parties.

93. This section eliminated in 1902.

IV. OF APPEALS.

94. An appeal is the removal of a judicial case, by a written representation, from an inferior to a superior judicatory; and may be taken, by either of the original parties, from the final judgment of the lower judicatory. These parties shall be called appellant and appellee. Final judgments in judicial cases shall be subject to reversal and modification only by appeal, and no judicatory from whose final judgment an appeal shall have been taken, shall be heard in the appellate judicatory, further than by the reading of the dissents, protests and written opinions of its members assenting to or dissenting from its judgments. When a judicial case has been decided by a judicial Commission of an inferior judicatory, sitting during an interval between the meetings of the electing judicatory,

an appeal from the judgment of such Commission may be taken and prosecuted before a superior judicatory, in the same manner as if the judgment had been rendered by the judicatory.

95. The grounds of appeal may be such as these: Irregularity in the proceedings of the inferior judicatory; refusal to entertain an appeal; refusal of reasonable indulgence to a party on trial; receiving improper, or declining to receive important, testimony; hastening to a decision before the testimony is fully taken; manifestation of prejudice in the conduct of the case; and mistake or injustice in the decision.

96. Written notice of appeal, with specifications of the errors alleged, shall be given, within ten days after the judgment has been rendered, to the Clerk, or, in case of his death, absence, or disability, to the Moderator, of the judicatory appealed from, who shall lodge it, with the records and all the papers pertaining to the case, with the Clerk of the superior judicatory before the close of the second day of its regular meeting next ensuing the date of his reception of said notice.

97. The appellant shall appear in person or by counsel before the judicatory appealed to, on or before the close of the second day of its regular meeting next ensuing the date of the filing of his notice of appeal, and shall lodge his appeal and specifications of the errors alleged, with the Clerk of the superior judicatory, within the time above specified. If he fail to show to the satisfaction of the judicatory that he was unavoidably prevented from so doing he shall be considered as having abandoned his appeal, and the judgment shall stand.

98. Neither the appellant, nor the members of the judicatory appealed from, shall sit, deliberate, or vote, in the case.

99. When due notice of an appeal has been given, and the appeal and the specification of the errors alleged have been filed in due time, the appeal shall be considered in order.

The judgment, the notice of appeal, the appeal, and the specifications of the errors alleged, shall be read; and the judicatory may then determine, after hearing the parties, whether the appeal shall be entertained. If it be entertained, the following order shall be observed:

(1) The record in the case, from the beginning, shall be read, except what may be omitted by consent.

(2) The parties shall be heard, the appellant opening and closing.

(3) Opportunity shall be given to the members of the superior judicatory to be heard.

(4) The vote shall then be separately taken, without debate, on each specification of error alleged, the question being taken in the form: 'Shall the specification of error be sustained?' If no one of the specifications be sustained and no error be found by the judicatory in the record, the judgment of the inferior judicatory shall be affirmed. If one or more errors be found, the judicatory shall determine whether the judgment of the inferior judicatory

shall be reversed or modified, or the case remanded for a new trial; and the judgment, accompanied by a recital of the error or errors found, shall be entered on the record. If the judicatory deem it wise, an explanatory minute may be adopted which shall be a part of the record of the case.

100. When the judgment directs admonition or rebuke, notice of appeal shall suspend all further proceedings; but in other cases the judgments shall be in force until the appeal is decided.

101. The judicatory whose judgment is appealed from shall send up its records, and all the papers relating thereto, and filed with the record. If it fails to do this, it shall be censured; and the sentence appealed from shall be suspended, until a record is produced in which the issue can be fairly tried.

102. Appeals are, generally, to be taken to the judicatory immediately superior to that appealed from.

CHAPTER X.

103. A dissent is a declaration of one or more members of a minority in a judicatory, expressing disagreement with a decision of the majority in a particular case.

104. A protest is a more formal declaration, made by one or more members of a minority, bearing testimony against what is deemed a mischievous or erroneous proceeding, decision, or judgment, and including a statement of the reasons therefor.

105. If a dissent or protest be couched in decorous and respectful language, and be without offensive reflections or insinuations against the majority, it shall be entered on the records.

106. The judicatory may prepare an answer to any protest which imputes to it principles or reasonings which its action does not impart, and the answer shall also be entered upon the records. Leave may thereupon be given to the protestant or protestants, if they desire it, to modify their protest; and the answers of the judicatory may also, in consequence, be modified. This shall end the matter.

107. No one shall be allowed to dissent or protest who has not a right to vote on the question decided—and, in judicial cases, no one shall be allowed to dissent or protest who did not vote against the decision; provided, that when a judicial case has been decided by a judicial Commission, any member of the judicatory to which the decision is reported, may enter his dissent or protest, or his answer to any protest, in the same manner as if the case had been tried before the judicatory itself, and he had voted thereon; and provided, that when a judicial case has been decided by a judicial Commission, sitting during an interval between the meetings of the electing judicatory, any member of such judicatory or of the Commission may, within ten days after the rendering of the judgment by the Commission, file his dissent from or protest against the judgment with the Clerk of the Commission; and the Commission or any member thereof may, within twenty days after the rendering of the judgment, similarly file an answer to any protest; and the Clerk of the

Commission shall enter upon the record all dissents, protests, and answers, or shall forward the same to the Stated Clerk of the electing judicatory to be so entered by him."

4. CONSTITUTIONAL RULES, NO. 1. LOCAL EVANGELISTS.

(Adopted 1893.)

Local Evangelists.

It shall be lawful for Presbytery, after proper examination as to his piety, knowledge of the Scriptures, and ability to teach, to license, as a local evangelist, any male member of the Church, who, in the judgment of Presbytery, is qualified to teach the gospel publicly, and who is willing to engage in such service under the direction of Presbytery. Such license shall be valid for but one year unless renewed, and such licensed local evangelist shall report to the Presbytery at least once a year, and his license may be withdrawn at any time at the pleasure of the Presbytery. The person securing such license shall not be ordained to the gospel ministry, should he desire to enter it, until he shall have served at least four years as a local evangelist, and shall have pursued and been examined upon what would be equivalent to a three years' course of study in theology, homiletics, Church history, Church polity and the English Bible, under the direction of Presbytery.

Same Exhibit, APPENDIX A. p. 451.

5. ACTS OF THE GENERAL ASSEMBLY; SESSIONS AND CHURCHES:

1. Act relating to the power of Session over worship: Beginning with line 23, page 468, of said Exhibit, with the words, 'The General Assembly,' ending with line 4, page 169, thereof, with the words, 'love and forbearance,' and reading as follows:

"The General Assembly takes notice that the exclusive authority over the worship of the Church, including not only the times and places of preaching the Word, but also the music and the use of the church building, is not sufficiently appreciated by the church at large, and that there are frequent complaints that trustees of congregations assume powers and authority, especially over music and the use of church buildings, which are not warranted by, but in conflict with, the Constitution of the Church.

The Assembly enjoins upon the Churches loyal adherence to our form of Government, providing that the authority of the Session over all matters of worship is paramount and at the same time recommends that all such questions be treated by the Sessions with Christian tact and courtesy, in the spirit of love and forbearance (1893, p. 90)."

6. ACTS OF GENERAL ASSEMBLY, ACT RELATING TO THE RECORDS OF CONGREGATIONAL MEETINGS AND BOARD OF TRUSTEES: Beginning with line 7, page 469, of said Exhibit, with the words, 'That the rule,' and ending with line 23, page 469, thereof with the words, 'by the Session,' and reading as follows:

(1) That the rule is not discretionary, but mandatory, that Church Sessions shall order the incorporation of proceedings of congregational meetings with their own records.

(2) That it is in the power of Church Sessions to direct that the proceedings of such meetings, or of the church (whether said proceedings are reported to the Session in the form of minutes of meetings, or as Reports of Board or Committees) shall be incorporated in the Sessional records in such manner and to such extent only, as will faithfully exhibit the action taken.

This construction of the rule in question is to be understood to apply to the proceedings of trustees in all cases in which, under the laws of the places where they exercise their functions, their action is subject to review by the Session."

7. ACTS OF THE GENERAL ASSEMBLY.—ACT RELATING TO THE ORGANIZATION OF A PARTICULAR CHURCH: Beginning with line 26, page 469, with the words, 'That a particular,' ending with line 30, page 471, thereof, with the words, 'to their office,' and reading as follows:

"That a particular Presbyterian church, so far as adults are concerned, is constituted and organized as such, by a number of individuals, professing to walk together as the disciples of Jesus Christ, on the principles of the Confession of Faith and Form of Government of the Presbyterian Church, and the election and ordination of one or more ruling elders, who by the ordination service, become the spiritual rulers of the persons voluntarily submitting themselves to their authority in the Lord.

(1) This organization ought always to be made by application to the Presbytery, within the bounds of which the church to be organized is found, unless this be exceedingly inconvenient, in which case it may be done by a duly authorized missionary or a neighboring minister of the gospel.

(2) At the time appointed for the purpose, after prayer for divine direction and blessing, the presiding minister or committee appointed by the Presbytery, should first receive from those persons to be organized into the new church, if they have been communicants in other churches, letters of dismissal and recommendation; and in the next place, examine and admit to a profession of faith, such persons as may offer themselves, and may be judged suitable to be received on examination. If any of these persons admitted to a profession on examination, have not been baptized, they should in this stage of the business be made the subjects of Christian baptism.

(3) The individuals ascertained in the foregoing manner to be desirous and prepared to associate as a church of Christ, should now, by some public formal act, such as rising, joining hands, or subscribing a written statement, agree and covenant to walk together in a church relation, according to the acknowledged doctrines and order of the Presbyterian Church.

(4) The next step is to proceed to the election and ordination of ruling elders, in conformity with the directions given on

this subject in the Form of Government of the Presbyterian Church.

Deacons are to be elected and ordained in like manner as in the case of ruling elders.

(5) When a church has been organized in the manner already described, report of the same should be made, as soon as practicable, to the Presbytery within whose bounds it is located. And when a missionary, or other minister of the gospel, not especially appointed to the work by a Presbytery, has, in the manner specified, organized a church, not within the known bounds of any Presbytery, the church thus organized should as soon as practicable make known to some Presbytery with which it may be most naturally and conveniently connected the time and manner of its organization, and desire to be received under the care of said Presbytery.

(6) In cases in which churches are to be formed within the known boundaries of any Presbytery, it is most desirable that persons wishing to be organized as a Presbyterian Church should petition that Presbytery to receive them under its care for the purpose of organizing them in due form.

(7) There may be people in destitute portions of our land, who may be disposed to associate for the purpose of forming a Presbyterian congregation, when no minister of the gospel can be obtained to aid them. The forming of associations for such a purpose, in the circumstances contemplated, should be considered not only as lawful, but highly commendable. And such associations, when formed, should as speedily as possible, take measures for obtaining the preaching of the gospel, and for becoming organized as regular churches.

(8) Cases may also occur, in various places, in which a collection or association of people may desire the preaching of the gospel, and be willing in whole or in part, to support it, and yet may not have suitable men among them to sustain the office of ruling elders.

Such people may and ought to obtain a preacher of the gospel to labor among them, and occasionally to administer ordinances, under the direction of some Presbytery, till they shall find themselves in circumstances to make a proper choice of ruling elders, and to have them regularly set apart to their office."

8. ACTS OF GENERAL ASSEMBLY—ACT RELATING TO THE ORGANIZATION AND ENROLLMENT OF A PARTICULAR CHURCH:—Beginning with line 33, page 471 of said Exhibit, with the words, '(1) A particular,' ending with line 28, page 472 thereof, with the words, 'or a Presbyterian Church,' and reading as follows:

"A particular church consists of a number of communicants together with their offspring, associated by the direction of Presbytery, professing to walk together as the disciples of Jesus Christ, on the principles of the Confession of Faith and the Form of Government of the Presbyterian Church, and should be recognized and enrolled as such.

(2) The first act of the newly organized church should be the election, under the supervision of the Committee of Presbytery, of ruling elders and deacons. The committee should at once appoint a minister of the Presbytery as Moderator of session, until the church shall elect a pastor, and the Presbytery takes further action.

(3) The Committee of Presbytery should carefully consider the character and other qualifications of every candidate for ruling elder or deacon and should discountenance the election or ordination of those who appear unsuitable.

(4) When, however, proper persons cannot be found among the communicants for church officers, all the facts should be reported to Presbytery, which should regard the organization as potentially a church, and therefore entitled to enrollment and supervision; but as imperfect in its condition, being disqualified lacking the proper officers, from exercising government and discipline, and from representation in the judicatories of the Church. The Presbytery should therefore appoint a Special Committee to take the oversight of the church, and to secure, as soon as possible, the election of proper officers—ruling elders and deacons—that it may perform all the functions of a Presbyterian Church."

b. From the Confession of Faith of the Cumberland Presbyterian Church, 1883:

1. THE PREFACE, which reads as follows:

"The Cumberland Presbyterian Church was organized in Dickson County, Tennessee, February 4, A. D. 1810. It was an outgrowth of the most powerful revivals that this country has ever witnessed. The founders of the Church were Finis Ewing, Samuel King, and Samuel McAdow. They were ministers in the Presbyterian Church, who rejected the doctrine of election and reprobation as taught in the Westminster Confession of Faith. The causes which led to the formation of the Church are clearly and distinctly set forth in publications issued at the time, and in various tracts and books published subsequently. To these the reader is referred for full information on the subject.

The Cumberland Presbytery, which was constituted at the time of the organization of the Church, and which originally consisted of only three ministers, was in three years sufficiently large to form three Presbyteries. These Presbyteries, in October, A. D. 1813, met at the Beech Church, in Sumner County, Tennessee, and constituted a Synod. This Synod at once formulated and published a 'Brief Statement,' setting forth the points wherein Cumberland Presbyterians dissented from the Westminster Confession of Faith. They were as follows:

1. That there are no eternal reprobates.
2. That Christ died not for a part only, but for all mankind.
3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.

4. That the Spirit of God operates on the world, or as extensively as Christ has made atonement, in such a manner as to leave all men inexcusable.

At this same meeting of Synod too, a committee was appointed to prepare a Confession of Faith. The next year, A. D. 1814, at Sugg's Creek church, Wilson County, Tennessee, the report of the committee was presented to Synod, and the revision of the Westminster Confession of Faith which they presented was unanimously adopted as the Confession of Faith of the Cumberland Presbyterian Church. Subsequently the formation of the General Assembly took place. This judicature, at its first meeting, A. D. 1829, at Princeton, Kentucky, made such changes in the Form of Government as were demanded by the formation of this new court.

In compiling the Confession of Faith, the fathers of the Cumberland Presbyterian Church had one leading thought before them, and that was to so modify the doctrine of universal foreordination and its legitimate sequences, unconditional election and reprobation, limited atonement, and divine influence correspondingly circumscribed. All the boldly defined statements of the doctrine objected to were expunged, and corrected statements were made. But it was impossible to eliminate all the features of hyper-Calvinism from the Westminster Confession of Faith by simply expunging words, phrases, sentences, or even sections, and then attempting to fill the vacancies thus made by corrected statements or other declarations, for the objectionable doctrine, with its logical sequences, pervaded the whole system of theology formulated in that book.

The compilers knew this, and they also knew that a book thus made must necessarily have some defects. Still they felt that they had prepared one which could not be fairly and logically interpreted without contradicting the most objectionable features of hyper-Calvinism; and they felt too, that they had formulated a system of doctrines which any candid inquirer after truth might understand. They did not, however, claim that the time would never come when there might be a demand for a restatement of these doctrines, which would set forth more clearly and logically the system of theology believed and taught by the Cumberland Presbyterian Church. That time did come, and so general was the desire throughout the Church to have the Confession of Faith revised, that at the General Assembly which convened in the City of Austin, Texas, A. D. 1881, a paper was introduced looking to that end, and it was adopted by a unanimous vote.

In view of the great importance of the work, two committees were appointed, and it was made the duty of the first committee to revise the Confession of Faith and Government, and of the second to review and revise the work of the first. The Committees met at Lebanon, Tenn., the seat of Cumberland University, where every facility could be enjoyed for such labors, having free access to a fine theological library. After bestowing great labor upon

their work, giving each item, earnest and prayerful attention, the committees completed the tasks assigned them, and the results of their labors were published in pamphlet form and in weekly papers of the Church for information, "that criticism might be made by those desiring to do so." The committees, after receiving these criticisms, again met and remained in session for a number of days, giving careful and prayerful consideration to all the suggestions made. They then completed their work without a single dissent, and submitted the result to the General Assembly which convened in the City of Huntsville, Alabama, A. D. 1882. That General Assembly, in 'Committee of the Whole,' considered with great patience and care every item in the entire book, taking a vote on each separately, and at the close of each chapter or subject taking a vote upon it as a whole. In this way the entire book, from beginning to end, was carefully and prayerfully scrutinized, and necessary changes were made—the most of them verbal; and there was not in the final vote a single negative.

Having completed its work, the General Assembly transmitted the book to the Presbyteries for their approval or disapproval. The reports from the Presbyteries to the next General Assembly, which convened in the City of Nashville, Tennessee, A. D. 1883, showed that this work had been almost unanimously adopted. The General Assembly, having reviewed these returns from the Presbyteries, formally declared said book to be the Confession of Faith and Government of the Cumberland Presbyterian Church.

The book is now sent forth with the strongest convictions that it is in accord with the Word of God. Let it be tested, not by tradition, but by the Holy Scriptures, the only infallible rule of faith and practice."

2. FROM THE INTRODUCTION TO THE CONFESSION AS FOLLOWS; being parts of Sections 1, 6 and 7.

"1. God alone is Lord of the Conscience, and has left it unfettered by the doctrines and commandments of men which are in anything contrary to his word. The right of private judgment therefore, in respect to religion, is universal and inalienable. * *

6. All Church-power, however exercised, is ministerial and declarative only; that is, the Holy Scriptures are the only infallible rule of faith and practice. No church judicatory ought to assume, by virtue of its own authority, to make laws to bind the conscience; and all its decisions should be founded upon the revealed will of God. * *

7. Every Christian Church, or union, or association of particular churches, has the right to declare the terms of admission into its communion, and the qualifications of its ministers, officers, and members, as well as the whole system of its internal government. * * * *

3. FROM THE CONFESSION OF FAITH, Sections 36, 39, 40, 49, 53, 87, 108, 110, and 111, as follows:

"36. Man, by disobedience, lost his innocence, forfeited the favor of God, became corrupt in heart and inclined to evil. In this state of spiritual death and condemnation, man is still free and responsible; yet, without the illuminating influences of the Holy Spirit, he is unable either to keep the law or lay hold upon the hope set before him in the gospel.

39. The Holy Spirit, operating through the written word, and through such other means as God in his wisdom may choose, or directly, without means, so moves upon the hearts of men as to enlighten, reprove, and convince them of sin, of their lost estate, and of their need of salvation; and, by so doing, inclines them to come to Christ.

40. This call of the Holy Spirit is purely of God's free grace alone, and not because of human merit, and is antecedent to all desire, purpose, and intention on the part of the sinner to come to Christ; so that while it is possible for all to be saved with it, none can be saved without it.

49. Justification is purely of God's free grace, and is a full pardon, for all sins, and exemption from all their penal consequences; but it imparts no moral qualities or merits to the believer, being strictly a legal transaction. * *

53. Regeneration is of God's free grace alone, and is the work of the Holy Spirit, who, by taking of the things which are Christs, and showing them unto the sinner, enables him to lay hold on Christ. * * * *

87. Civil officers may not assume to themselves the administration of the word and the sacraments, or in the least interfere in matters of faith; yet it is their duty to protect the Church of our common Lord, without giving any preference to any denomination of Christians. And, as Jesus Christ has appointed a government and discipline in his Church, no law of any Commonwealth should interfere therewith, but should provide that all religious and ecclesiastical assemblies shall be held without molestation or disturbance.

CHURCH AUTHORITY.

108. The Lord Jesus, as king and head of his Church, has therein appointed a government intrusted to Church-officers, distinct from the civil government.

CHURCH COURTS.

110. Church-government implies the existence of Church courts invested with legislative, judicial, and executive authority; and the scriptures recognize such institutions, some of subordinate and some of superior authority, each having its own particular sphere of duties and privileges in reference to matters ministerial and ecclesiastical, yet all subordinate to the same general design.

111. It is the prerogative of these courts, ministerially, to determine controversies of faith and questions of morals, to set down rules for the better ordering of the public worship of God and government of his church, to receive complaints in case of maladministration, and authoritatively to determine the same, which determinations are to be received with deference and submission."

4. FROM THE CONSTITUTION OF THE CUMBERLAND CHURCH.

THE CHURCH.

"1. Jesus Christ, who is now exalted far above all principality and power, has established in this world a kingdom which is his church.

2. The universal Church consists of all those persons, in every nation, who make profession of the holy religion of Christ and of submission to his laws.

As this immense multitude cannot meet together in one place to hold communion, or to worship God, it is proper, and authorized by Scripture example, that they should be divided into many particular churches.

4. A particular church consists of a number of professing Christians voluntarily associated together for Divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.

Its officers are the minister in charge, the ruling elders and the deacons.

Its jurisdiction is lodged in the Church-session, composed of the minister in charge and ruling elders.

7. In the organization of a church the first step is to receive testimonials on behalf of such of the applicants as are members of the church, if there be any; and then to admit upon a profession of faith in Christ such candidates as, on examination, may be found qualified.

These persons should, in the next place, be required to enter into covenant by answering the following question affirmatively: Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an organized church on the principles of the government of the Cumberland Presbyterian Church; that you will support the gospel as God has prospered you, and that you will study the purity and harmony of the whole body?

The presiding minister shall then say: I now pronounce and declare that you are constituted a Church according to the Word of God and the principles of the Government of the Cumberland Presbyterian Church, subject to the approval of the Presbytery. In the name of the Father, and of the Son and of the Holy Spirit. Ruling Elders and deacons are then to be elected, ordained and installed.

16. In all cases, except when a Commission for that purpose shall have been appointed by the Presbytery, any ordained minister,

belonging to the Presbytery in the bounds of which the new church is to be located, may preside at the organization of such church, and perform all the duties incident thereto, but in such cases the new church shall not be located within 5 miles of an existing Cumberland Presbyterian Church without the consent of the Presbytery.

17. Ruling elders, the immediate representatives of the people are chosen by them, that, in conjunction with the ministers, they may exercise government and discipline, and take the oversight of the spiritual interests of the particular Church, and also of the Church generally, when called thereunto. It appertains to their office, both severally and jointly, to watch diligently over the flock committed to their charge, that no corruption of doctrine or of morals enter therein. Evils which they cannot correct by private admonition they should bring to the notice of the Church-session. They should visit the people at their homes, especially the sick; they should instruct the ignorant, comfort the mourner, nourish, guard, and instruct the children of the Church, and all those duties which private Christians are bound to discharge by the law of charity are especially incumbent upon them by Divine vocation, and are to be discharged as official duties. They should pray with and for the people; they should be careful and diligent in seeking the fruit of the preached word among the flock, and should inform the minister in charge of cases of sickness, affliction, and awakening, and of all others which need his special attention.

24. It is necessary that the government of the Church be exercised under some certain and definite form, and by various courts, in regular gradation. These courts are denominated Church-sessions, Presbyteries, Synods and the General Assembly.

25. The Church-session exercises jurisdiction over a single Church; the Presbytery, over what is common to the ministers, Church sessions, and Churches within a prescribed district; the Synod, over what belongs in common to three or more Presbyteries, and their ministers, Church-sessions, and Churches; and the General Assembly, over such matters as concern the whole Church; and the jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity, or progress of the church; and although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation.

All Church-courts shall be opened and closed with prayer.

26. The Church-session consists of the minister in charge and two or more ruling elders of a particular Church.

In the absence of the minister in charge, and in a vacant Church, the ruling elders alone may form a Church-session for the transaction of business.

The Church-session shall be convened when any two ruling elders shall so request. The minister in charge may convene the Church-session at any time.

A majority of the Church-session shall be necessary to constitute a quorum unless, with the concurrence of the Church, the Church-session shall otherwise determine; but any two of the ruling elders, in conjunction with a minister, may receive members and grant letters of dismissal.

CHURCH COURTS.

27. The Church session is charged with maintaining the spiritual government of the church, for which purpose it is its duty to inquire into the doctrines and conduct of the church members under its care; to receive members into the church; to admonish, suspend or excommunicate those found delinquent, subject to appeal; to urge upon parents the importance of presenting their children for baptism; to grant letters of dismission, which when given to parents, shall always include the names of the baptized children; to ordain and install ruling elders and deacons when elected and to require those officers to devote themselves to their work; to examine the records of the proceedings of the deacons; to establish and control Sabbath schools and Bible-classes, with especial reference to the children of the church; to order collections for pious and church purposes; to take the oversight of the singing in the public worship of God; to assemble the people for worship when there is no minister; to concert the best measures for promoting the spiritual interests of the church; to observe and carry out the injunctions of the higher courts; and to appoint representatives to the higher courts; and require on their return a report of their diligence.

28. Every Church-session shall keep an accurate record of its proceedings, which must be at least once a year, submitted to the inspection of the Presbytery.

29. A Presbytery consists of all ordained ministers and one ruling elder from each church, within a certain district.

Every particular Church which is willing to support the gospel as God has prospered it shall be entitled to be represented by a ruling elder in Presbytery.

Every ruling elder not known to the Presbytery shall produce evidence of his regular appointment from the Church he represents.

31. The Presbytery has the power to examine and decide appeals, complaints and references brought before in an orderly manner; to receive, examine, dismiss, and license candidates for the holy ministry; to receive, dismiss, ordain, install, remove and judge ministers; to review the church records of the Church-sessions; redress whatever they may have done contrary to order, and to take effectual care that they observe the Government of the Church; to establish the pastoral relation, and to dissolve it, at the request of one or both parties, or where the interests of

religion imperatively demand it; to set apart evangelists to their proper work; to require ministers to devote themselves diligently to their sacred calling, and to censure and otherwise discipline the delinquent; to see that the injunctions of the higher courts are obeyed; to condemn erroneous opinions which injure the purity or peace of the Church; to resolve questions of doctrine and discipline seriously and reasonably proposed; to visit particular churches, to inquire into their condition, and to redress the evils that may have arisen in them; to unite or divide churches, with the consent of a majority of the members thereof, and for cause, to dissolve the relations between it and a particular Church, which shall thereafter cease to be a constituent of the Cumberland Presbyterian Church, and forfeits all rights as such; to form and receive new churches; to take special oversight of vacant churches; to concert measures for the enlargement of the Church within its bounds; in general, to order whatever pertains to the spiritual welfare of the Churches under its care; to appoint representatives to the higher courts; and finally, to propose to the Synod, or to the General Assembly, such measures as may be of common advantage to the Church at large.

32. The Presbytery shall keep a full and fair record of its proceedings, and shall send it up to the Synod annually for review. It shall report to the Synod and the General Assembly every year the condition and progress of religion within its bounds during the year, and all the important changes which may have taken place, such as censures, the ordinations, the receiving or dismissing of members, the removal of members by death, the union and the division of Churches, and the formation of new ones, and such statistical information as may be required.

35. The Synod consists of all the ministers and one ruling elder from each Church in a district comprising at least three Presbyteries. The Synod may be composed, at its own option, with the consent of a majority of its presbyteries, either of all the ministers and one ruling elder from each church in its district, or of equal delegations of ministers and ruling elders selected by the Presbyteries on a basis and in a ratio determined in like manner by the Synod and its Presbyteries."

36. Five ministers, who are members of one or more of the Presbyteries composing the Synod, shall constitute a quorum for the transaction of Synodical business, provided there be present at least one minister or one ruling elder from each of three Presbyteries. Members of the different Presbyteries in Synod shall not be entitled to vote on questions of appeal before the Synod from their own Presbytery, nor on other questions immediately concerning their own Presbyterial action.

"37. The Synod has power to receive and decide all appeals, complaints and references regularly brought up from the Presbyteries; to review the records of the Presbyteries, and to redress whatever they may have found contrary to order; to take effectual care that Presbyteries observe the government of the church, and

that they obey the injunctions of the higher courts; to create, divide or dissolve Presbyteries, when deemed expedient, to appoint ministers to such work, proper to their office, as may fall under its own particular jurisdiction—in general, to take such order with respect to the Presbyteries, Church-sessions and churches under its care as may be in conformity with the principles of the government of the church and of the word of God, and as may tend to promote the edification of the church; to concert measures for promoting the prosperity and enlargement of the church within its bonds; and, finally, to propose to the General Assembly such measures as may be of common advantage to the whole church.

38. It shall be the duty of the Synod to keep full and accurate records of its proceedings, to submit them to the inspection of the General Assembly at each of its stated meetings, and to report to it the number of its Presbyteries, and of the members thereof; and, in general, all important changes which may have occurred within its bounds during the year, as well as such statistical information as may be required.

40. The General Assembly is the highest court of this Church, and represents in one body all the particular Churches thereof. It bears the title of the General Assembly of the Cumberland Presbyterian Church, and constitutes the bond of union, peace, correspondence, and mutual confidence among all its Churches and courts.

41. The General Assembly shall meet as often as once every two years, at such time and place as may have been determined at its preceding meeting, and shall consist of commissioners from the Presbyteries in the following proportion: Every Presbytery shall be entitled to send one minister and one ruling elder; but if it consists of eighteen or more ministerial members, it shall send an additional minister and ruling elder.

Each Commissioner, before his name shall be enrolled as a member of the General Assembly, shall produce from his Presbytery satisfactory evidence of his appointment.

42. Any twenty or more of these Commissioners, at least ten of whom shall be ministers, being met on the day and at the place appointed, shall be a quorum for the transaction of business.

43. The General Assembly shall have power to receive and decide all appeals, references, and complaints regularly brought before it from the inferior courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline; to give its advice and instruction, in conformity with the Government of the Church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior courts observe the Government of the Church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide or dissolve Synods; to institute and superintend the agencies necessary

in the general work of the church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this Church; to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds respectively; to superintend the affairs of the whole church; to correspond with other Churches; and, in general, to recommend measures for the promotion of charity, truth and holiness throughout all the Churches under its care.

45. In the Organization of a Church, the ruling elders and deacons shall be elected by the members participating in the organization.

In all other cases, it is proper and advisable for the Church-session, when in its judgment the interests of the Church so require, to select additional persons to fill these offices, and to nominate them at the Church at a stated appointment for worship, or at a meeting called for that purpose, when an election shall be had in the form most approved in that particular Church. This method shall not preclude any members of the Church from making other nominations if he so desire.

46. When any person has been elected to either of these offices, and declares his willingness to accept, the Church-session shall appoint a day for his ordination.

The day having arrived, and the Church-session being convened in the presence of the church, a sermon shall be preached, if convenient, after which the presiding minister shall state in a concise manner the warrant and nature of the office of ruling elder or deacon, together with the character proper to be sustained, and the duties to be performed.

Having done this, he shall propose to the candidate, in the presence of the church, the following questions: * * *

III. Do you approve of the government of the Cumberland Presbyterian Church?

V. Do you promise to study the peace, purity and edification of the church?

VI. (In case of ruling elder) Do you promise to submit yourself to your brethren in the Lord assembled in the various church courts?

RELATIONS BETWEEN MINISTERS AND CHURCHES.

58. No minister shall take charge of a church as its pastor, or otherwise, without the consent of the Presbytery in the bounds of which the church is located, or subject to the approval of the Presbytery at its next meeting; and when such consent is obtained, the parties shall fulfill mutual engagements with fidelity.

Where the relation of pastor is formed between a minister and a church, it shall not be dissolved except by mutual consent, of which

the parties shall make report to the Presbytery; or, when one of the parties so desire, the Presbytery shall do so, if sufficient reasons are presented therefor, or where the interests of religion, in the opinion of the Presbytery, shall imperatively demand it. But such relations ought not to be broken up hastily.

59. In forming the pastoral relation, the following rules should be observed:

I. When a church wishes to procure the labors of a minister as pastor, it shall give him a regular call for an indefinite time, stating in the call the salary proposed.

II. This call should be submitted to the Presbytery and if the minister accept, and the Presbytery approve of the relation, a day shall be appointed for the installation.

AMENDMENTS.

60. Upon the recommendation of the General Assembly, at a stated meeting, by two-thirds vote of the members thereof, voting thereon, the Confession of Faith, Catechism, Constitution, and Rules of Discipline, may be amended or changed when a majority of the Presbyteries upon the same being transmitted for their action, shall approve thereof.

The other parts of the Government, that is to say, the General Regulations, the Directory of Worship, and the Rules of Order—may be amended or changed at any meeting of the General Assembly by a vote of 2/3 of the entire number of Commissioners enrolled at that meeting, provided such amendment or change shall not conflict, in letter or spirit, with the Confession of Faith, Catechism or Constitution.”

5. RULES OF DISCIPLINE OF CUMBERLAND CHURCH.

“The Nature of Discipline.

1. Discipline is the exercise of such authority and the application of such system of laws as are deemed necessary for the internal government of the Church of Christ. In one sense it refers to the whole government, inspection, and control which the church maintains over its members, officers and courts; but in a restricted sense it signifies judicial investigation. * * *

7. Original jurisdiction in relation to ministers pertains exclusively to the Presbytery, and in relation to other Church-members to the Church-session. * * *

Removing Questions from a Lower to a Higher Court.

67. Every decision made by any church court, except the highest, is subject to the review of a superior court, and may be brought before it by general review and control, reference, appeal or complaint.

General Review and Control.

68. Every court above the church session shall, at stated intervals, as prescribed, review the proceedings of the court next below. If any lower court shall omit to send up its records for

this purpose, the higher court may order them to be produced, either immediately, or at a particular time, as circumstances may require.

69. In reviewing the records of an inferior court, it is proper to examine 1. Whether the proceedings have been regular. 2. Whether they have been wise, equitable and for the edification of the church. 3. Whether they have been correctly recorded. 4. Whether the injunctions of the superior courts have been obeyed.

70. Generally, the superior court may discharge its duty by simply recording on its own Minutes the approval, the correction of proceedings or the censure which it may think proper to pass on the records under review, also by making an entry of the same in the book reviewed. But, should irregular proceedings be found such as demand interference, the inferior court may be required to review and correct them. In cases of process however, no judgment of an inferior court shall be reversed, unless regularly brought up by appeal or complaint.

71. Should courts neglect to perform their duty, and thereby heretical opinions or corrupt practices be allowed to gain ground, or offenders suffered to escape, or circumstances of great irregularity be not distinctly recorded, whereby their records may not exhibit a full view of their proceedings, the superior court, if satisfied that such neglect or irregularity has occurred, shall take cognizance of the same, examine, deliberate, and judge in the whole matter as if it had been recorded, and thus brought up by review of the records.

72. When a court of appellate jurisdiction shall be advised, either by the records of the court below, or by memorial with or without protest, or by any other satisfactory mode, of any important or irregular proceedings of such court, it may be cited to appear by representative or in writing, at a specified time and place, to show what it has done, or failed to do in the matter in question. The Court issuing the citation after full investigation, may reverse the proceedings as in other judicial cases, or it may remit the whole matter to the court below, with an injunction to take it up and dispose of it in a regular manner; or all further proceedings in the matter may be suspended by the appellate court, as circumstances may require.

References.

73. A reference is a representation of a matter not yet decided, made by an inferior to a higher court, and must always be in writing.

Appeals.

80. An appeal is the removal of a cause already decided from an inferior to a superior court, the effect of which is to arrest sentence until the matter is finally decided. It is allowable, after judgment, to either of the parties to the proceedings, but those who have not submitted to a regular trial are not entitled to appeal.

COMPLAINTS.

89. A complaint is a representation made to a superior court against an inferior court. Any member of the church submitting to its authority, may complain against every kind of decision, except when an appeal has been taken. A complaint shall not suspend, while pending, the effect of the decision of which the complaint is made. Notice of complaint shall be given in the same time and manner as notice of appeal.

93. A protest is a solemn and formal declaration by a minority against the action of the majority, and is generally accompanied with the reasons upon which it is founded.

94. If a protest or dissent be couched in temperate language, and be respectful to the court, it shall be recorded, and the court may put an answer thereto on its records.

95. The higher court shall take cognizance of, and render its judgments on, all protests appearing upon the records passing under its review."

6. GENERAL REGULATIONS, SECTIONS 3, 4, 11.

"Admission of New Churches.

3. When a new church is organized it shall, through its Church session, apply to the Presbytery in the bounds of which it is located, to become a constituent thereof, in the following or like form:

To the Presbytery of :

The undersigned respectfully represent that on the day of, A. D., there was organized by the Rev. (or by commission of Presbytery, as the case may be) at, a new church, adopting the principles of the government of the Cumberland Presbyterian Church, with a membership of and electing the undersigned as ruling elders, and and as deacons.

Under and by authority of said church, we do hereby apply to be received under your care, and we promise a cheerful compliance on its part, as well as our own, with all the duties and obligations enjoined upon particular churches and their officers by the government of the Cumberland Presbyterian Church.

.....
Ruling Elders.

(Date)

SELECTING MINISTERS AND PASTORS.

4. In the exercise of its powers to procure a minister to take charge of a church as pastor or otherwise, the Church-session should in all cases endeavor to ascertain the will of the church, and procure such minister as will best subserve the interests of that particular church.

11 Each Commissioner, before his name shall be enrolled as a member of the General Assembly, shall produce satisfactory evidence of his appointment.

A commission in the following or like form shall be furnished each Commissioner:

The Presbytery of, in the Synod of, being met on the day of, A. D.,, at, doth hereby appoint ministers (post-office address.....) or in case of the absence of either of them, then ministers ... (post-office address) and (postoffice address.....) or in case of the absence of either of them, then ruling elders..... (post office address.....) and (post office address.), in the order named, to be Commissioners on behalf of this Presbytery to the next stated meeting of the General Assembly of the Cumberland Presbyterian Church, to be held at on the day of A. D.,, or wherever and whenever the said meeting may be held, to consult, vote, and determine on all things that may come before the same, according to the principles of the Government of the Cumberland Presbyterian Church and the word of God; and of their diligence herein they are to render an account on their return.

Signed by order of the Presbytery.

.....Clerk,

.....Moderator."

7. DIRECTORY OF WORSHIP, SECTION 21, as follows:

"21. In publicly receiving new members into the Church on profession of their faith in Christ, the following is recommended as a

Form of Church Covenant.

Let the candidates for membership rise, and the minister propound to them, severally, the following questions, to be answered in the affirmative:

I. Do you receive the Scriptures of the Old and the New Testament as the word of God, the only infallible rule of faith and practice?

II. Have you experienced that you were a condemned and helpless sinner, and, so far as you know your own heart, have you believed in Christ as an all-sufficient Saviour, realizing that God, for Christ's sake, has pardoned your sins?

III. Will you earnestly strive to avoid the follies and vices of the world, to increase in knowledge, to grow in grace, and to live henceforth in Christ?

IV. Do you promise to abide by and support the rules and regulations of the Cumberland Presbyterian Church so long as you may be a member thereof; to be faithful in your attendance at the public religious services in the congregation, including the prayer meetings, as God may give you health and strength, endeavoring to keep the unity of the Spirit in the bond of peace; to love your brethren in the Lord, to act toward them with kindness and justice; to judge with candor, and admonish with charity?

V. As you consecrate yourself to God, you also consecrate your substance; and being his steward, do you promise to contrib-

ute of that substance, as he may prosper you, to the support of the gospel?

After answering these questions in the affirmative, the applicants for membership should be baptized, unless they have previously received that sacrament; and the minister should deliver a charge, suitable to the occasion, to the newly-received members and to the congregation.

This form of Church-covenant is not to supersede the examination of applicants by the Church-session."

c. From the Constitution of the Presbyterian Church in the United States.

The plaintiffs offer no documents from this book.

VII.

The plaintiffs offer no evidence from either "Documentary Evidence" by John M. Gaut, or "Successive Steps." by W. C. Caldwell, documents mentioned in Section 5 of Stipulation No. 2.

Additional Documents.

1. *Certified.* COPY OF THE CHARTER OF THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

"State of Kansas, Department of State:

AD ASTRA PER ASPERA

C. E. Denton, Secretary of State: TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

8, C. . Denton, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of the charter of the Synod of Kansas of the Presbyterian Church in the United States of America, the original of which is now on file and as a matter of record in this office.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed my official seal. Done at the City of Topeka this 22nd day of September, A. D. 1909.

C. E. Denton, Secretary of State.

By J. T. Botkin, Asst. Secretary of State.

CHARTER OF THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA.

The undersigned, citizens of the State of Kansas, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of Kansas, and do hereby certify:

FIRST.

That the name of this corporation shall be THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH OF THE UNITED STATES OF AMERICA.

SECOND.

That the purposes for which this corporation is formed are to support public worship and education by exercising general supervision over the religious and educational affairs of the Presbyterian churches, schools and colleges in Kansas, and holding and conveying of such real and personal property to which the title may be vested in it for the purposes of such support and supervision.

THIRD.

That the place where its business is to be transacted is at Osborne, Kansas, and other places in said State.

FOURTH.

That the term for which this corporation is to exist is fifty years.

FIFTH.

That the number of directors of this corporation shall be . . . and the names and residences of those who are appointed for the first year are:

S. S. Estey, Topeka, Kansas, J. S. Glendenning, Topeka, Kansas, T. F. Garver, Topeka, Kansas, William Foulkes, Kansas City, Kansas, Theodore Bracken, Phillipsburg, Kansas, B. H. Gragg, Lawrence, Kansas.

SIXTH.

That the estimated value of the goods, chattels, lands, rights and credits owned by the corporation is ———dollars. That the amount of the capital stock of this corporation shall be None Dollars, and shall be divided into shares, of Dollars each.

SEVENTH.

That the names of the stockholders of said corporation, and the number of shares by each, are as follows:

Names.	Residences.	Number of Shares.
.		
None.		

IN TESTIMONY WHEREOF, We have hereunto subscribed our names, this day of September, A. D. 1909.

S. S. Estey,
J. J. Clendenning,
T. F. Garver,
William Foulkes,
B. H. Gragg,
Theodore Bracken,

State of Kansas, Wyandotte County, ss.

Be it Remembered, that on this 13th day of September, A. D. 1909, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came William Foulkes, who is personally known to me to be the same person who executed the

within instrument of writing, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

John B. Jenkins, Notary Public.

Commission expires June 10th, 1912.

State of Kansas, Douglas County, ss.

BE IT REMEMBERED, that on this 14th day of September, A. D., 1909, before me a Notary Public in and for said county and state, came B. H. Gragg, to us personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, on the day and year last above written.

E. J. Hilkey, Notary Public

My commission expires January 26th, 1910.

State of Kansas, Shawnee County, ss.

Personally appeared before me, a Notary public in and for Shawnee County, Kansas, the above named S. S. Estey, J. S. Clendenning and T. F. Garver and Theodore Bracken who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal, this 15th day of September, A. D. 1909.

Robert Garver, Notary Public.

(My commission expires Dec. 13, 1912)."

2. THE EXECUTIVE COMMISSION, CONSTITUTIONAL AUTHORITY THEREFOR. Chapter 12, Section 4, Constitution of 1911 of Presbyterian Church in the United States of America, page 370, and reads as follows:

"The General Assembly may appoint an Executive Commission, of which the Moderator shall be Chairman. The number of members, powers and duties, and term of service of the Commission shall be determined by the General Assembly; provided that judicial cases shall be referred only to Judicial Commissions."

3. THE EXECUTIVE COMMISSION AND THE BUDGET PLAN. Minutes of the General Assembly of the Presbyterian Church in the United States of America, 1908, pages 156-157, and that part thereof which reads as follows:

"1. The Executive Commission shall be composed of eight ministers and seven ruling elders, who shall be elected by the General Assembly, be divided into three classes, and serve for terms of three years each, except that the first class of three min-

isters and two ruling elders shall serve for one year, the second class of two ministers and three ruling elders for two years, and the third class of three ministers and two ruling elders for three years. The Moderator of the General Assembly shall, pursuant to the provisions of the Form of Government, be Chairman of the Commission and one of the ministerial members of the class be elected by the General Assembly which shall elect him as Moderator. The Stated Clerk of the General Assembly shall be Secretary of the Commission. No paid Agents or members of the Church Boards, or permanent officers of the Assembly, shall be members of the Commission.

2. The commission shall have power to fill all vacancies until the next ensuing meeting of the General Assembly, and in the event of a vacancy in its chairmanship, may elect one of its ministerial members to fill the vacancy until the next ensuing meeting of the General Assembly.

3. The necessary expenses of the Commission and of its members shall be paid by the Treasurer of the General Assembly.

4. The duties and powers of the Commission shall be as follows:

(a) To receive and consider the financial reports of the several Boards and Permanent Agencies of the Church, and such other related information as it may deem desirable, and report thereon to the Assembly.

(b) To prepare a tentative budget for the fiscal year next ensuing the meeting of the General Assembly at which the budget is presented, containing in separate items the aggregate sum recommended for each Board and Permanent Agency for such year, and to prepare a tentative apportionment of each such aggregate sum among the several Presbyteries. When adopted by the General Assembly, a copy thereof shall be promptly transmitted by the Stated Clerk of the General Assembly to the Executive Commission and to each Board and Presbytery. Each Presbytery shall be free to raise its apportionment in such manner as it may deem expedient; always giving due effect, however, to the wishes of individuals and organizations in gifts to any particular Board.

(c) To confer with the Boards and Permanent Agencies concerning methods for securing moneys so apportioned, to determine upon its methods, and to have general oversight of the execution of such methods by its own agents, in cooperation with the Boards and Permanent Agencies.

(d). To consider such matters as may from time to time be submitted to it by the General Assembly, and by the Boards and other agencies of the Church.

(e). To consider, between the annual meetings of the General Assembly, cases of serious embarrassment or emergency concerning the benevolent, missionary or other work of the Church, and to provide practical relief.

(f). To obtain and collate facts concerning the benevolent and missionary work of the Presbyteries and Synods of the Church, and of our Boards and other agencies, and of voluntary missionary agencies of an interdenominational character, and to report the same, with such recommendations as it may deem proper, to the General Assembly.

(g). To discharge such other executive or administrative duties as the General Assembly may from time to time require; and from time to time to recommend to the General Assembly such action concerning the needs of the Church as the Commission may deem wise.

5. In order to promote the efficiency of the Executive Commission by giving it proper time to examine reports of the Boards and other agencies of the church, and to prepare a tentative budget for presentation to the General Assembly, the fiscal year of each of our Boards shall be left to the Commission, with power to act after consultation with the parties concerned."

4. APPOINTMENT OF ADVISORY COMMITTEE IN MISSOURI BY EXECUTIVE COMMISSION.

"Rev. W. H. Roberts, D. D., LL. D., Witherspoon Building,
Stated Clerk and Treasurer, Philadelphia, Pa.

Nov. 19th, 1909.

This certifies that the Committee on Legal Matters connected with Reunion of the General Assembly of the Presbyterian Church in the U. S. A., by virtue of the authority conferred upon it, appoints the following persons as an Advisory Committee within the bounds of the Synod of Missouri, viz: S. J. Niccols, D. D., W. H. Black, D. D., John B. Hill, D. D., Judge E. P. Gates of Kansas City and Frank McDavid, Springfield, Mo.

Attest:

Wm. H. Roberts,
Chairman

J. M. Hubbert,
Secretary."

5. RESOLUTION OF EXECUTIVE COMMISSION AUTHORIZING SUITS, MINUTES EXECUTIVE COMMISSION NOV. 19, 1909.

"Resolved, That this Committee retains the services of Frank Hagerman Esq. to represent and protect the interest of the Presbyterian Church in the U. S. A., in the Federal and State Courts of Missouri, and further,

Resolved, That he (Mr. Hagerman) be authorized to protect or defend any suit or proceeding in said Courts in the name of this Committee, or such Board, agency or corporation of the Church whose interests in the title to any property formerly of the Cumberland Presbyterian Church, and now vested in the said Presby-

terian Church in the U. S. A., by virtue of the Reunion and Union of the Cumberland Presbyterian Church and the Presbyterian Church in the U. S. A. is threatened, and who may legally become party to said proceeding or suit.

Attest:

Wm. H. Roberts,
Chairman

J. M. Hubbert,
Secretary.

Philadelphia, Pa.,

Nov. 19, 1909."

6. RESOLUTION EXECUTIVE COMMISSION AUTHORIZING LEGAL ACTION, MINUTES SAME, NOV. 18, 1909—and reading as follows:

/ "The Special Committee appointed to report the action that should be taken by the Executive Commission to protect the property interests of the Church which are imperilled by litigation in the State of Missouri and other states, respectfully report that, after as careful consideration as time would allow, and availing ourselves of such legal advice as we could obtain, we have concluded that the Executive Commission should formally authorize and empower the Special Committee on Legal Matters connected with the Reunion, or the Trustees of the General Assembly or both to take any legal steps to protect the interest of our Church that may be judged advisable. Accordingly we present the following resolution.

The Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, having been constitutionally appointed and having been empowered by the said General Assembly to consider between the annual meetings of the General Assembly cases of serious embarrassment or emergency concerning the benevolent, missionary or other work of the Church, and to provide practical methods of relief, "hereby authorizes and empowers William H. Roberts, Ira Landrith, J. E. Clarke, F. V. Brown, S. S. Chapman, B. Gilpin, Esq., and Rudolph Schick, Esq. Constituting the Special Committee of the General Assembly on Legal Matters connected with Reunion, or in case of any inability of said Committee to act, then John H. Converse and others being the Trustees of the General Assembly of the Presbyterian Church in the United States of America, or both bodies, to retain Counsel in the State of Missouri or elsewhere, to appear for and protect the rights of the Presbyterian Church in the United States of America in and to any property formerly of the Cumberland Presbyterian Church and now vested in the Presbyterian Church in the United States of America by virtue of the Reunion and Union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America.

RESOLVED, That the Executive Commission authorizes the Committee on Legal Matters to appoint such co-operati'g committees or agents as may be necessary.

In view of the short time within which one step must be taken, Nov. 24, it has seemed to us that no more time should be allowed to pass without definite action being taken. We also believe that our interests will be duly considered by either one or both of the committees we name above.

Attest:

Wm. H. Roberts,
Secretary.

New York N. W.,
Nov. 18, 1909.

Respectfully submitted,

FRANK HAGERMAN,
VIRGIL V. HUFF,
Solicitors for Complainants.

J. S. SUDDATH,
W. M. WILLIAMS,
JOHN M. GAUT,
Of Counsel.



In the
**District Court of the United States for the
 Western Division of the Western
 District of Missouri**

THE SYNOD OF KANSAS ET AL., Complainants,
 vs. No 3540
 MISSOURI VALLEY COLLEGE ET AL., Defendants,

JAMES M. BARKLEY ET AL., Complainants,
 vs. No. 3546.
 HUGH HAYES ET AL., Defendants.

In addition to the evidence offered by complainants, showing the proceedings had in the respective General Assemblies of the Cumberland Presbyterian Church and the Presbyterian Church, in the United States of America, with relation to the alleged union, during the years of 1903, 1904, 1905 and 1906, the defendants offer from printed abstract of record in Missouri Valley College et al., vs. Guthrie et al., from pages 735 to 750 thereof, part V of the report of the Committee on Church Co-operation and Union to the General Assembly of the Presbyterian Church, for the year of 1904, and the dissent of John R. Davis and Elisha R. Perkins thereto as the same appears from the Minutes of the said Assembly for that year, as follows: The Committee on Church Co-operation and Union respectfully reports to the General Assembly as follows:

**V. REUNION WITH THE CUMBERLAND PRESBYTERIAN
 CHURCH.**

The proposed reunion and union of our Church with the Cumberland Presbyterian Church requires that certain of the more prominent facts and circumstances connected with the negotiations be set forth clearly. They are as follows:

1. Meetings.—As already stated, two joint meetings were held at St. Louis, Mo., by the Committee on Union of the two Churches in October, 1903, and February, 1904. In addition a joint meeting of subcommittees was held at Cincinnati, O., in December, 1903. Every session of these meetings was opened and closed with earnest

and continued prayer for the guidance and blessing of the Spirit of God. This devotional spirit joined with an unfailing courtesy gave to the conferences a delightful and gracious tone, which contributed largely to the harmonious results secured. Frank, free and full discussion of all the interests involved was had, and without a note of impatience or a hint of controversy. Both committees in all their work consulted and wrought as brethren of one household of faith.

2. Revision.—It was made clear to the brethren of the Committee on Fraternity and Union of the Cumberland Presbyterian Church, at the outset of our conferences, that the Revision of the Confession of Faith recently undertaken by our Church was not occasioned by any pressure from without, but was purely a movement within our own denomination. It was also stated that the purposes of the movement were two—to disavow inferences drawn from certain statements in the Confession of Faith, and also to set forth clearly some aspects of revealed truth, which appeared to call for more explicit statement. In addition it was declared that the effect of the adoption of the Declaratory Statement as a part of the Constitution was simply to give legal standing to interpretations of Chapter III and of Chapter X, Section 3, which previously had seemed to have merely the force of private opinion, and that the revision of the Confession of Faith had affected no material change in the doctrinal attitude of our Church.

3. Educational Qualifications.—The matter of the qualifications of candidates for the gospel ministry and of Christian ministers was dealt with frankly during the deliberations. One of the causes which led to the organization of the Cumberland Presbyterian Church was the lack of educational qualifications on the part of certain men ordained to the ministry by the Cumberland Presbytery about 1803. At that time there were in our Church (130) no theological seminaries, Princeton, the first in order of time of these valuable institutions, being established in 1811. Theological instruction was given prior to that year either privately or in colleges. For instance, in the college of New Jersey, now known as Princeton University, candidates for the ministry were taught theology by Church Authority from 1768 to 1811 by the president of the institution. Since 1812 both Churches have endeavored according to ability to provide institutions for the education of candidates, and the Cumberland Presbyterian Church has been and is in hearty and growing sympathy with high standards of qualifications for the ministry of the gospel. Its committee offered no objection to the provisions as to ministerial qualifications contained in our Form of Government, and gave expression to the opinion that Constitutional Rule No. 1 of our law, providing for the licensing of local evangelists, would meet the needs of their Presbyteries as to a certain class of workers in the field.

4. Boards and Committees.—The general administrative work of the Cumberland Presbyterian Church is entrusted to three boards and four permanent committees. The Board of Missions and Church Erection is entrusted with both the Home and Foreign Mission work. In 1902 Foreign Missions were maintained in China (four missionaries), in Japan (twenty-one missionaries), and in Merico (four missionaries). The number of Home Missionaries is

twenty-five, and in addition six workers in the Chinese Mission at San Francisco, Cal. The contributions to Home Missions were \$91,088; to Foreign Missions, \$17,306; to Church Erection, \$6,347, a total of \$114,741. The Board of Publication has charge of the Sabbath School periodicals and other literature of the Church. It is in a prosperous condition, its gross business in 1902 amounting to \$112,201, upon which there was a net profit of \$11,235. The board manages for the Church the Publication House at Nashville, Tenn., upon which there is an indebtedness of \$60,000, the assets of the house being \$197,993. The Board of Ministerial Relief has upon its roll forty-seven ministers and forty-three widows of ministers, and its receipts for the year were \$10,637. The Endowment Fund amount to \$25,437. The permanent committees are the Educational Society, which has charge of the educational work of the Cumberland Presbyterian Church, and received in 1902, \$12,134 for distribution between five colleges and one theological seminary. The permanent committee on Sunday School has charge of Sunday school mission work and also of the preparation of Sunday School literature. Its receipts during the year 1902 were \$3,588. The permanent committee on Temperance is engaged in the prosecution of the work indicated by its title, and its expense are met by voluntary contributions. The permanent committee on Christian Endeavor has oversight over young people's work, and the Endeavor Societies raised for missions during the year 1912, \$5,139.53.

(131) 5. Financial Obligations.—The question of the increased financial obligations likely to come upon certain of the boards was also referred to, more especially as to the Board of Relief and Home Missions. For the satisfaction of the Assembly in this particular, it is proper to state that the sum contributed during the year ending December 31, 1902, for the relief of ministers in the Cumberland Presbyterian Church amounted to about \$66 per capita. To provide for those in that Church, who are now entitled to relief, should the union be accomplished, would require, if the allowances were increased to our standard, an annual sum of about \$15,000 in addition to the present resources of our Board of Relief. The Board of Home Missions could promptly expend anywhere from \$50,000 to \$75,000 additional to the contributions from the field. The sums required for other boards and agencies would be conditioned by the needs of their fields, but would not be burdensome to the united Church.

6. Church Statistics.—The Cumberland Presbyterian Church has been from the beginning of its history an Evangelistic Church, and is still such in a marked degree by force of circumstance. The minutes of its General Assembly for 1903 show that it had in the previous year 2,960 churches; that 1,470 of these had preaching only one Sunday a month; that those with pastors and pastors-elect number 834; those supplied regularly by evangelists and missionaries, 1,431, and those without regular ministers, 595. The total number of ordained ministers was 1,616. In this connection attention is drawn to the fact that in many of our own Presbyteries in the West and Southwest a large number of our own churches are served by stated supplies, Home Missionaries and pastors-at-large.

The following comparative exhibit of communicants by Synods within common territory, both for the Cumberland Presbyterian Church and our own Church, is instructive.

		Total No. Members	
		Cumberland	U. S. A.
I.	Alabama.	7,855	.....
II.	Arkansas	11,075	.....
III.	Illinois.	15,672	73,633
IV.	Indiana.	5,911	44,243
V.	Indianola.	3,271	5,859
VI.	Iowa.	1,099	44,879
VII.	Kansas.	2,697	29,964
VIII.	Kentucky.	16,468	8,258
IX.	Mississippi.	5,963	.....
X.	Missouri.	28,342	23,809
XI.	Ohio.	2,503	102,983
XII.	Oregon.	1,655	17,862
XIII.	Pacific.	2,287	25,929
XIV.	Pennsylvania.	7,480	228,284
XV.	Tennessee.	41,923	7,232
XVI.	Texas.	30,908	3,379

(132) It is evident that the Church occupies a field largely located in the Mississippi Valley, and that union would make our Church strong and potential in the Middle South and Southwest, and also give to it a national character commensurate with its name, its history and its responsibilities. But union would also make necessary strenuous work in evangelization, and a considerable increase in Home Missionary contributions if the work is to be effectively done. The field is white to the harvest, but the laborers are few.

7. Race Presbyteries.—The question of the relation to the united Church of the colored population is one involving grave issues. While this subject has been referred to another special committee of the Assembly, the Committee on the Territorial Limits of Presbyteries, it is proper to state that this committee was in consultation with said committee through its chairman, the Rev. S. J. Niccolls, D. D., LL. D. A full exhibit of the matters involved and action to be recommended will be made by Dr. Niccolls' committee. It is desired, however, by your Committee on Union to place on record its judgment that the time has come to consider soberly and reasonably the question of the propriety of the organization of more than one Presbytery upon the same ground, and solely in relation to the deep spiritual needs of the nations and races, whom God in His providence has called into the unity of the American Nation. These races and nationalities are not few in number, and it is probable that their spiritual welfare can be greatly advanced by the extension to Presbytery, and possibly to Synod of the rule as to organization, which has already been applied for more than a generation to congregations. For many years our Church has recognized the value for these peoples of separate church organizations. We have not only congregations of the African, but also of the Mongolian and Indian races, and in addition churches called by the names of the German, Welsh, Portuguese, Spanish, Italian, Hungarian and Bo-

hemian nations. We have also had about forty years a Presbytery composed of Indian congregations, and at present existing within the bounds of four Synods. All this has been done solely out of a sincere desire to promote the spiritual welfare of these peoples. What is proposed in Recommendation No. 1 is that where any race or nationality is present in any locality or region in sufficient numbers to make it advantageous to its spiritual welfare and development to have Presbyteries or Synods as well as congregations organized upon race or national lines, then the same shall be done, provided it is desired by the parties directly interested, and is deemed advisable by the superior ecclesiastical body having jurisdiction. This recommendation, it is fully understood by both committees, applies equally to the white, negro, Mongolian and Indian races, and to immigrants (133) from the different European nations. The proposal is, in the form given it, not an attack upon any one race, but an effort to secure for all races and nationalities larger liberty of specific action for their own spiritual development within the Church at large.

No effort was made by the Cumberland Presbyterian Committee to secure any change as to the Church relations of the colored ministers and congregations now in connection with this General Assembly. It was understood that these relations were matters that belonged to our Church alone.

Cordial testimony is borne to the kindly sentiments of the brethren of the other Committee toward the colored people. While since 1869 there has been a separate church known as the Cumberland Presbyterian Church, colored, having about 300 ministers, 500 congregations and 35,000 communicants, yet it is aided by the older Church in a fraternal way, and a Committee from the Assembly of the Colored Church appears annually upon the platform of the other Assembly. Further, it is a pertinent fact that in the Chicago Presbytery of the Cumberland Presbyterian Church a colored congregation and pastor are enrolled.

The committee in all its negotiations stood firm upon the Scriptural principles of the real unity of the household of faith and the equality of all its members. It was also clearly understood by both committees that these principles were to control the Church in the future as well as in the past, and that as a result, if Presbyteries were organized on race or national lines, they would be represented, equally with all other Presbyteries, in the General Assembly. This equal representation of all Presbyteries in the Supreme Court will emphasize and preserve the unity of the Church, while allowing, so long as needful, in exceptional cases, separate congregations, Presbyteries and Synods.

8. Doctrinal Agreement.—Matters of vital importance to the proposed Union are found in Concurrent Declaration No. 1. This Declaration is not a part of the Basis of Union. It gives expression to the earnest and urgent feeling of the Committee of the Cumberland Presbyterian Church, first, as to the systems of doctrine of the two Churches, and second, as to the liberty of belief within the lines of the Reformed Faith which they regard as assured to them by the Declaratory Statement appended to our Confession. A very considerable period of time was spent upon this Concurrent Declara-

tion. The members of the Cumberland Presbyterian Committee declared that their Church held to the Reformed Faith, that they applied for admission and had been admitted as Presbyterians to the "Alliance of the Reformed Churches throughout the world holding the Presbyterian System," and that they believed that they were sufficiently in accord with us to enter into negotiations for union. The language used in the first paragraph of Concurrent Declaration No. 1 declaring (134) that such agreement contained in the Confession of Faith of the two Churches as to warrant this union—a union honoring alike to both, was primarily the language of that Committee. It is to be interpreted in the light of the fact that preceding it the statement is found that the Cumberland Presbyterian Church in the U. S. A. Whatever the differences between the Churches have been, and there have been decided differences, these brethren must be regarded as giving expression to the sincere conviction that such a doctrinal agreement now exists between the Church as to warrant their adopting our Confession as interpreted by the Declaratory Statement. Your Committee likewise appreciated the power of this presentation made by the brethren of the other Committee, and while the language of Declaration No. 1 was not satisfactory to them or to us, and effort was made to secure a different phraseology, it was felt by all that some cordial acknowledgment of a sufficient doctrinal agreement to warrant union, should union be deemed advisable, was due to a Church which it is proposed by both Committees should yield its name, adopt our Standards as an entirety, and find complete union with us.

With reference to the declaration as to liberty of belief which is contained in the second paragraph of Concurrent Declaration No. 1 it was understood that no more liberty of belief was expected by the Cumberland brethren, than is now accorded under the Revised Confession to our own ministers and elders.

Reference is made at the close of Concurrent Declaration No. 1 to the Brief Statement of the Reformed Faith adopted in 1902, by the General Assembly of the Presbyterian Church in the U. S. A. "for better understanding of our doctrinal beliefs." The brethren of the Cumberland Presbyterian Church understood clearly that the Brief Statement was not a part of the Constitution but simply a doctrinal deliverance, and it had force as interpreting the Reformed Faith only so long as it should be acceptable to the Church, and that it could be altered or rescinded by any General Assembly. Reference to it is made solely in order to give light as to the doctrinal attitude of both Churches. The Cumberland Presbyterian Committee declared the Brief Statement to be doctrinally an admirable document, entirely acceptable to them.

9. **The Plan a Unit.**—Recommendation No. 2 contains at its close the following statement: "This entire plan of union shall be in operation when said Basis of Union, Concurrent Declarations and Recommendations No. 1 shall have been adopted in their entirety and where necessary by Presbyterian action." These words state definitely the fact that it was the desire of the committee of the Cumberland Presbyterian church to make the proposed (135) union of the churches dependent upon adoption of every part of the Plan of Union, especially Concurrent Declaration No. 1 and Recommendation No. 1, and that therefore the Plan should be acted upon as a unit in

both Assemblies. If this General Assembly and the Cumberland Presbyterian General Assembly cannot see their way clear to acknowledge a sufficient agreement in doctrine between the two Churches to warrant the Union, and if this Assembly and Church feel unable to provide in a Constitutional manner for the existence of more than one Presbytery on the same ground, then it is respectfully submitted that the proper course to pursue would be to recommit the Plan of Union with a view to further and modified action. No. 1 declaring (134) that such agreement now exists between the

10. Powers of the Committee.—The Committee in presenting the Plan of Union with the Cumberland Presbyterian Church respectfully states that it has not regarded itself as possessing the right to reject any authoritative proposal for union submitted for its consideration. It is held that the Committee simply has power to deal with the details of Plans to carry forward negotiations so far as deemed wise, and to report the results for action to the General Assembly. It is for this General Assembly to say, not for its Committee, whether proposals for Union from other Presbyterian denominations shall be accepted, rejected, modified or referred back for further consideration.

The report which is now submitted represents not the individual opinions of the members of this or of the other Committee, but the results of much thought and labor, performed by the members of both Committees, under the influence of an earnest desire to bring together long-separated brethren.

JOINT REPORT OF UNION.

(Same as quoted from minutes of Cumberland Presbyterian Church 1904, pages 61A to 65a inclusive).

(139) Should the foregoing Basis of Union be sent down to the Presbyteries of this Church, it is understood that the Constitutional majority necessary for its adoption is two-thirds of all said Presbyteries. It is worthy of note that the Joint Report is signed by all the members of the Committee of the Cumberland Presbyterian Church. Two members of your Committee have declined to sign it, the Rev. John R. Davis, D. D., and Mr. Elisha H. Perkins. Their dissent is printed at the end of the Report.

This Joint Report (Part of the General Report) was published by the Cumberland Presbyterian Committee whose Chairman stated that the practice in their Church permitted and the situation required such publication. Your Committee stated definitely that it had no authority to publish.

In bringing this Report to a close, the Committee urges upon the Assembly solemn consideration of the great responsibilities which rest upon it in the Providence of God. The Church of which the Assembly is the Supreme Judicatory is privileged to be the largest of the Presbyterian denominations, not only in the United States, but also in the world. Whatever is done in connection with any of the matters submitted, should be done with a distinct understanding of the obligations imposed by the providential situation (140).

There is a leadership which is foreordained of God, and involves great opportunities of service to the Kingdom of Christ. All action taken it is hoped will be such as to insure not only to the maintenance of the truth, in which our Church believes, and the preservation of all things which Presbyterians hold dear, but also to a closer relationship between the Churches constituting our denominational family the increase of the spread of a true fraternity among the several Christian denominations, and the progressive advance of the Church of Christ in this land and throughout the world.

The Committee respectfully requests that it be continued.

In behalf of the Committee,

WM. H. ROBERTS, Chairman.

DISSENT.

Rev. Wm. H. Roberts, D. D., Chairman.

Dear Mr. Roberts: We have most carefully and conscientiously considered the Joint Report of our Committee and that of the Cumberland Presbyterian Church adopted at the Conference at St. Louis in February, and sent to us by you for signature, as we were unable to be present. We regret to inform you our brethren on the Committee that we find ourselves unable to attach our signatures thereto but must dissent therefrom.

We dissent from the Joint Report on Union as a whole.

1. Because we fear serious controversy and loss to the Church are likely to arise under the proposed adjustment of property rights and methods of administration and,

2. Because in our judgment the two Churches differ so definitely in traditions, the training of their ministers, their methods of work, their modes of dealing with prominent social questions, and above all in doctrinal belief, as their doctrinal beliefs are set forth in their respective Confessions of Faith that union between them would not be justified. And we particularly dissent from the first of the Concurrent Resolutions, likely to be placed on its declarations, contrary to facts. With sincere assurance of esteem for the brethren of the two Committees and for yourself, we remain,

Very respectfully,

JOHN R. DAVIS
ELISHA H. PERKINS

2. The Defendants offer from pages 771 to and including page 776, of said printed abstract of record, the protest to the union movement, in the General Assembly of the Cumberland Presbyterian Church for the year of 1905, from the minutes of said Assembly for said year.

PROTEST TO THE UNION MOVEMENT

Elder J. J. McClellan requested that the following protest, with signatures attached, should be spread upon the minutes, which request was granted by the Assembly:

To the General Assembly of the Cumberland Presbyterian Church in session in Fresno, California, May, 1905:

We, the undersigned members of the Cumberland Presbyterian Church, and duly commissioned and enrolled members of your body, do hereby most respectfully beg to submit our emphatic protest to the majority action of your body, in reference to the proposed organic unification of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, for the following reasons, to-wit:

1. The system of doctrine taught in the confession of faith of the Cumberland Presbyterian Church, in its pure and simple statements, is in happy and harmonious response to our convictions of the doctrines of the Holy Scriptures.

2. Through nearly a century of history these doctrines have given our Church a distinctive spirit of evangelization and power that easily rank it (79) among the leading and most effective organizations for advancing and enlarging the Kingdom of Christ.

3. Our doctrine is distinctively "via media" between the doctrines of Calvinism and Arminianism, and no character of interpretation or amount of reconstruction can bring one into harmony with the other.

4. The confession of faith of the Cumberland Presbyterian Church and the entire ninety-five years of history of the Church are protestant to the doctrines explicitly expressed and taught in the Westminster Confession, the confessional statement of doctrines upon which it is proposed that this union shall be effected.

5. The confessional revision of 1903 of the Presbyterian Church in the United States of America does not amend, revise, or eliminate those doctrines to which ours has stood as an unyielding protest. Not a word or line of those objectionable chapters, sections or text has been changed, modified or eliminated.

6. The declaratory statement is not revisional in either intent or effect upon the doctrines of decrees and fatality as expressed and taught in the Westminster Confession. The legal and logical effect of the declaratory statement is a reaffirmation of these doctrines.

7. The plan of basis of this union is not in its legal and logical effect union of the two churches. Its consummation would be purely and simply the merging of the membership of our communion into the other communion and the conveyance of all our property assets into that communion. Our history, name and confessional doctrines are extinguished in the consummation of the plan.

8. The action of the Assembly at Nashville, Tennessee, May, 1903, in appointing the Committee on Fraternity and Union was either without constitutional warranty or that committee has exercised prerogatives not contemplated by the Assembly as a whole.

9. The action of the General Assembly at Dallas, Texas, May, 1904, in the effort to adopt and submit the joint report of the Committee on Fraternity and Union to the Presbyteries for action was both irregular and without constitutional authority. The effect of the plan, or basis, of union contemplates the adoption of the confession of faith and ecclesiastical standards of the Presbyterian Church in the United States of America by our Presbyteries, or Church. The constitutional provision for an action of this character was not followed in the general reference.

10. A change of three votes from the negative to the affirma-

tive side at the Dallas Assembly would have defeated the reference to the Presbyteries. At least twelve members of that Assembly, whose names can be secured and given, voted for a reference, or submission, to the Presbyteries under a misapprehension of their real official relation to such an act or its legal purport. In other words, under a full and fair understanding of their official relation to such an action, of apprehension of its real purport, at least twelve votes would have been cast negatively that were cast affirmatively, defeating the Union proposition.

11. There is no constitutional provision for the dissolution of our Church organization or merging it into a communion having and holding different (80) doctrines. It is only expressly provided to receive into our communion other ecclesiastical bodies whose doctrines and systems of government conform to ours.

12. No action has been taken by our Assembly looking to the adoption of the form of government, rules of discipline and directory of worship of the Church with which it is proposed that we unite, as provided in second paragraph of Section 60 of our Constitution.

13. The provision adopted by the Presbyterian Church in the United States of America for the organization of separate Presbyteries and Synods is radically and materially different in its processes from the one proposed by the Joint Committee on Fraternity and Union and incorporated in its official report. In other words, it is not the provision upon which our Presbyteries have voted.

14. The past twelve months of discussion has clearly developed the fact that our Church is neither ready for, nor willing to enter into a Union on the Basis, or Plan, proposed. The movement was confessedly premature; coercive measures can only produce confusion.

15. The official returns and past statements in the public prints show that the other church is far from being a unit in confirming the proposed organic union. This opposition is of a character and strength that demands serious consideration. The logic of its position is in many real and vital points in harmony with the opposition in our Church. It arrests the attention of considerate and reflective minds. The arbitrary exercise of authority, either legally vested or assumed, in disregard of its existence and warnings, can only have disastrous results.

16. With all these facts and conditions clearly before our minds an effective organic unification is utterly impracticable. It means disorder, chaos and confusion, instead of peace, prosperity and enlarged opportunities. It must bring the dangers of shame and reproach to the Kingdom of our Master, instead of the opportunity of strength and the enlargement of His domain. And in His name, and in behalf of His Kingdom, we would submit our most emphatic protest to the majority action of this Assembly in approving the proposed Plan of Union.

J. J. McClellan,
W. B. Young,
R. P. Taylor,
Z. M. McGhee,
W. M. Crawford,
W. S. Bridges,
Joe H. Fussell

J. S. Lish,
G. P. Grimes,
H. G. Baxter, M. D.,
R. D. Miller,
J. D. Caldwell,
C. A. Davis,
I. A. Zinn

S. D. Logan,
 R. D. Shook,
 N. D. Crawford, D. D. S.
 J. P. McDonald,
 J. H. Thomas,
 W. H. McLesky,
 W. F. Cannon, M. D.,
 J. H. Zwingle,
 (81)
 James K. Langford,
 J. L. Prices,
 N. M. Lurton,
 S. H. Braly,
 Hardy Copeland,
 Henry Bond,
 Silas James,
 C. W. Dunn,
 H. A. Stevenson,
 J. A. Hill,
 J. P. McDaniel,
 A. C. Wheeler,
 B. T. Parr,
 T. A. Cox,
 A. M. Moose,
 R. E. Woods,
 A. S. Barger,
 E. H. Albright,
 M. L. Sloop,
 J. T. Jones,
 E. L. McWilliams,
 H. Y. McCaleb,
 Chas. L. Wade,
 J. D. Gaston,
 F. H. Pendergast,
 F. M. Montgomery,
 James Menzies,
 J. H. Beanland,
 P. H. Harris,
 W. G. Milligan,

J. W. Smith,
 J. T. Barbee,
 J. A. Whitener,
 M. M. Smith,
 Wm. Thos. Dale,
 A. M. Buchanan,
 D. T. Turner,
 W. M. Robison,
 J. E. Candiveer,
 R. W. Davis,
 S. H. Murray,
 A. J. Ferrell,
 E. Robinson,
 Walter Davis,
 G. G. Anderson,
 J. S. McNutt,
 J. N. Parker,
 M. E. Wilkins, M. D.,
 M. S. Randolph,
 D. D. Higgason,
 P. E. Carothera,
 J. B. Eshman,
 A. W. Green,
 A. N. Eshman,
 J. B. Hadlock,
 John W. Groves,
 G. W. Freeman,
 J. M. Russell,
 Jasper Horne,
 N. R. French,
 C. B. Haddon,
 G. M. Smith,
 H. T. Shain,
 T. P. Modrell,
 John B. Tally,
 J. A. Keaton,
 M. L. Bullard,
 T. C. Tally,
 T. E. H. McCroskey.

3. The defendants offer from page 843 of said printed abstract of record, the Moderator's Declaration, from the Minutes of the General Assembly of the Cumberland Church for the year of 1906, as follows:

MODERATOR'S DECLARATION.

In terms contained in resolution fourteen of the Joint Report on Reunion and Union, Moderator Landrith then made the following declaration:

The Joint Report of the two Committees on Reunion and Union and the recitals and resolutions therein contained and recommended for adoption, having been adopted by the General Assembly of the Presbyterian Church in the United States of America and the Gen-

eral Assembly of the Cumberland Presbyterian Church, and official notice of such adoption having been received by each of the said General Assemblies from the other, I do solemnly declare and here publicly announce that the basis of Reunion and Union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church, and that the official records of the two Churches during the period of separation shall be preserved and held as making up the history of the one Church.

4. The defendants offer from pages 845 to 856 inclusive, said printed abstract of record, from the Minutes of the General Assembly of the Presbyterian Church in the United States of America, for the year of 1906, the report of the Committee on Church Co-operation and Union, to that body, including also the announcement on page 856, made by the stated Clerk of said Assembly, of the incorporation of the Cumberland Church with the Presbyterian, and the enrollment of its Synods etc., as follows.

The special Committee on Church Co-operation and Union, through its Chairman, Rev. W. H. Roberts, D. D., presented its report, which was accepted.

Part V of the report, being the Joint Report on Reunion and Union with the Cumberland Presbyterian Church, with all its recitals and resolutions, was adopted with only two dissenting votes. Rev. Wm. Laurie, D. D., one of the dissentients, asked that his name be recorded as voting in the negative.

Upon the adoption of said Part V, the Joint Report of Reunion and Union, with all its recitals and resolutions, the Moderator, as required by the terms of Resolution 14 of said report, made the following declaration to-wit.

"The Joint Report of the two Committees on Reunion and Union and the recitals and resolutions therein contained and (124) recommended for adoption, having been adopted by the General Assembly of the Presbyterian Church in the United States of America and the General Assembly of the Cumberland Presbyterian Church, and official notice of such adoption having been received by each of the said General Assemblies from the other: I do solemnly declare and here publicly announce that the basis of Reunion and Union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church in the United States of America as one Church, and that the official records of the two Churches during the period of separation shall be preserved and held as making up the history of the one Church."

Upon invitation of the Moderator, Rev. W. H. Roberts, D. D., led the Assembly in a prayer of thanksgiving. The Assembly then united in singing, "Blest Be The Tie That Binds," followed by "Jesus Shall Reign Where'er the Sun."

Rev. Wm. H. Black, D. D. and Rev. B. P. Fullerton, D. D., members of the delegation to the Assembly appointed by the General Assembly of the Cumberland Church, being present, were invited to the platform, and addressed the Assembly.

5. The defendants offer from page 862 said printed abstract of record from the Minutes of the General Assembly of the Presbyter-

ian Church for the year of 1906, the List of Churches; the Ministers and Licentiates received from the Cumberland Church, and the adjourning order of the Assembly for said year.

LIST OF CHURCHES.

Arranged by Synods and Presbyteries, received into the reunited Church by the General Assembly of the Presbyterian Church in the U. S. A., May 24, 1906.

(Then follows the names of all the local churches in each of the 17 Synods and 114 Presbyteries of the Cumberland Presbyterian Church.)

(840)

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V. Ministers and Licentiates of the 114 Presbyteries received May 24, 1906.

(Under this heading is an enumeration by name, alphabetically, of all the ministers and licentiates of the Cumberland Presbyterian Church).

(243)

After solemn praise and thanksgiving, the business of the Assembly having been completed and the vote taken for dissolution, the Moderator dissolved the Assembly, saying: "By the authority delegated to me by the Church let this General Assembly be dissolved, and I do hereby dissolve it, and require another General Assembly, chosen in the same manner, to meet in the Broad Street Presbyterian Church or other suitable edifice, Columbus, Ohio, on the third Thursday of May, 1907."

6. The defendants offer from said printed abstract of record beginning with page 863 to and including the ninth line of page 866, thereof from the Supplemental Minutes of the General Assembly of the Cumberland Presbyterian Church, Afternoon Session, May 24th, 1906, as follows:

FROM SUPPLEMENTAL MINUTES GENERAL ASSEMBLY

CUMBERLAND PRESBYTERIAN CHURCH, AFTER-

NOON SESSION, MAY 24, 1906.

(4)

MINUTES.

Decatur, Ill., May 24, 1906, 1:30 p. m.

PRELIMINARY STATEMENT.

The Assembly having been in session since it convened on Thursday, the 17th inst., and having in that time adopted the Joint Report of Committee on Fraternity and Union between our Church and the Presbyterian Church in the United States of America, the protest previously filed being disregarded and the purpose of the majority to adjourn without day and without naming the place for another meeting being persisted in, they were informed on the floor of the Assembly, before the adjournment actually took

place, that the minority would treat the adjournment as illegal and ineffectual, and would continue the session of the General Assembly thereafter. And immediately upon the announcement of the adjournment by the then presiding Moderator, and before the unionists had dispersed, Commissioner J. H. Fussell, one of the loyalists, announced in a loud and distinct voice, within the hearing of both the Union and loyal Commissioners then in the Assembly hall, that the business of the General Assembly would be resumed at once in the hall of the Grand Army of the Republic near by, the Church house, in which the previous part of the Assembly's session was held having been refused by the loyalists for that purpose.

The loyal Commissioners, about 100 in number, in attendance at this point in the proceedings, repaired to the hall indicated, and proceeded to the transaction of the business of the Assembly.

ELECTION OF TEMPORARY CHAIRMAN AND CLERK.

The Moderator and Stated Clerk having retired, on motion of the Hon. J. J. McClellan, a ruling elder of New Hope Presbytery, was chosen temporary chairman; and D. M. McNulty, a ruling elder from Madison Presbytery, was chosen temporary clerk.

PRAYER.

The Rev. J. T. Barbee, of the Owensboro Presbytery, at the request of the Chairman, led the Assembly in prayer.

(7)

ELECTION OF MODERATOR.

On motion Rev. J. L. Hudgins, of Obion Presbytery in the Synod of West Tennessee, was elected Moderator by acclamation.

(8)

ELECTION OF STATED CLERK AND TREASURER.

On motion Rev. T. H. Padgett, of the Memphis Presbytery, in the synod of West Tennessee, was elected Stated Clerk and Treasurer by acclamation.

(12)

RESOLUTIONS TO RESCIND, ETC.

Judge John B. Talley, of Alabama, offered the following, which was adopted:

Whereas, the Union Commissioners in the General Assembly, of the Cumberland Presbyterian Church on the 23rd day of May, 1906, did accept the report of its committee on Fraternity and Union and did adopt the Joint Report of said Committee on Church Co-operation and Union of the Presbyterian Church in the U. S. A., on the subject of Reunion and Union of the Presbyterian Church in the U. S. A., with the Cumberland Presbyterian Church; and

Whereas, said Union Commissioners in the General Assembly by its Moderator, in accordance with said Joint Report, did "solemnly declare and publicly announce that the basis of reunion and union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church in the United States of America as one Church;" and,

Whereas, said Moderator did declare said General Assembly adjourned sine die; and,

Whereas, said action and announcements in the solemn judgment of the General Assembly of the Cumberland Presbyterian Church, was without legal authority and in violation of the constitution of the Cumberland Presbyterian Church and is of no binding force therefore.

Resolved, that the action and announcements aforesaid be and the same are hereby rescinded.

(14)

ADJOURNMENT.

On motion the Assembly adjourned to meet at the birthplace of the Cumberland Presbyterian Church in Dickson County, Tenn., on the third Thursday of May, 1907, at 10:30 o'clock a. m. The Assembly was led in the concluding prayer by the Rev. W. T. Gregory of Texas.

J. L. HUDGINS, Moderator.

T. H. PADGETT, Stated Clerk

7. The defendants offer said record from the printed abstract of record, "From Minutes General Assembly of Cumberland Presbyterian Church, 1907," on page 866, down to and including page 874, thereof, the same being proceedings of said Assembly for said year, as follows:

FROM MINUTES GENERAL ASSEMBLY CUMBERLAND PRESBYTERIAN CHURCH, 1907.

(9)

MINUTES.

Of the Seventy-seventh General Assembly of the Cumberland Presbyterian Church, held at Dickson, Tenn., May 16th to 21st, 1907. First Day, Thursday, Forenoon Session. May 16th, 1907, 10:30 a. m.

Pursuant to its own adjournment, the General Assembly of the Cumberland Presbyterian Church was convened for its 77th meeting at the birthplace of the Church in Dickson County Tennessee, on the third Thursday in May, 1907, at 10:30 a. m.

DEVOTIONAL EXERCISES AND OPENING SERMON.

The Moderator, the Rev. J. L. Hudgins, made explanation of the occasion, after which the Rev. R. D. Shook, by the Moderator's request, led in a brief, fervent prayer.

The Moderator read Luke 6:12-23, and delivered a sermon from the text Luke 6:17: "And he came down with them and stood in the plain."

OPENING PRAYER.

The opening prayer of the Assembly was offered by the Moderator, the Rev. J. L. Hudgins, and Assembly declared duly constituted.

(18)

FIRST DAY, THURSDAY NIGHT SESSION.

May 16th, 1907, 7:30 p. m.

The Assembly was called to order at 7:30 p. m. Prayer was offered by the Rev. Geo. W. May of Morgan Presbytery.

COMMITTEE ON SPECIAL PAPER

On motion the Moderator was instructed to appoint a special committee of five to examine a paper held by Judge Joe H. Fussell, and that said committee report to the Assembly at the close of the sermon to-night. The committee so appointed were Judge Joe H. Fussell, Rev. I. L. Goodknight, Rev. W. M. Robison, Judge Jno. B. Talley and the Hon. J. J. McClellan.

SERMON BY THE MODERATOR

The Moderator, the Rev. J. L. Hudgins, delivered a very able sermon. Prayer was led by the Rev. J. L. Riley of Indiana.

SERMON REQUESTED FOR PUBLICATION

By unanimous vote the Assembly requested the Moderator, the Rev. J. L. Hudgins, to reproduce his sermon of to-night that it may be put into pamphlet form.

REPORT ON SPECIAL COMMITTEE.

The foregoing committee of five appointed to examine a paper held by Judge Joe H. Fussell, reported the same to the Assembly that it was an address from this Assembly to the General Assembly of the Presbyterian Church in the United States of America.

The committee recommended the adoption of said paper and that the Stated Clerk forward a copy at once to the Moderator of the Presbyterian Church in the United States of America.

The report of the committee was unanimously adopted. The address is as follows:

ADDRESS TO GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

The General Assembly of the Cumberland Presbyterian Church in session at Dickson, Tennessee, to the General Assembly (19) of the Presbyterian Church in the United States of America, in session at Columbus, Ohio.

The year just now expiring has been an eventful year for your Church and for ours; eventful alike for each of them, but with different results. During that period, to our regret, perhaps as many as one-fourth of our lay members and more than one-half of our ministers have gone away from our Church and into yours on account of the so-called Union and Reunion between the two.

Notwithstanding all this the Cumberland Presbyterian Church, by the Grace of God, still survives; and it still feels that it has an important mission to perform in the world for our Divine Lord and Master. The vigor and zeal, the consecration and determination of our people in the performance of that mission are unabated. In this Assembly are now duly represented 76 of the 114 Presbyteries

of our Church, the others having been disorganized for the present only, through the influx of a disabling number of our ministers into your Church.

A large per cent of those leaving our communion for yours have been misled into that course by the often repeated statement in public addresses and otherwise, to the effect that your Church has abandoned the Westminster Confession of Faith as originally written and come to the doctrines of our Church. In the "Pastoral Letter" sent out by former Cumberland Presbyterians, as early as June, 1906, is found this statement: "But what is still more important to us is, that the Presbyterian General Assembly has declared that its amended creed is substantially the same as' our own.' And again, "The Presbyterian General Assembly by adopting the joint reports has also, in substance declared that our Confession of Faith correctly expresses the meaning of its own Confession of Faith which we have adopted."

It is not believed that a majority of your Church have sanctioned these misleading and unjustifiable statements, or that your Church desires to occupy the attitude indicated before the world.

The change of ecclesiastical allegiance by so large a part of our ministry and laity has brought profound regret and sorrow to our Church; yet that is not so distressing to our moral and religious sense, and to that of other Christian denominations, (20) as the cruel and relentless effort that has been made and is still being made throughout our Church on behalf of your Church and in its name, to coerce unwilling Cumberland Presbyterians and to compel them over their consciences to go into your Church, or, failing in that, then to coerce and compel them to give up their name, organization and Confession of Faith and surrender to your Church and in its name all of their houses of worship and other Church property. The demand thus made and pressed vigorously and incessantly, in court and out of court, on behalf of your Church and in its name, is, in substance and effect, that Cumberland Presbyterians shall worship as Presbyterians in the United States of America, or not at all; and, in the latter event, that they shall be forced to give up to that Church all of their houses of worship and other property.

In the month of July, 1906, an injunction bill was filed at Fayetteville, Tennessee, by and in the name of certain former Cumberland Presbyterians, "and all other ministers, officers, and members of the Presbyterian Church in the U. S. A." The object of that bill, as recited therein, was to restrain and prohibit Cumberland Presbyterians (1) from using their own houses of worship, (2) from asserting any right thereto in any court of law or equity, (3) from the use of their church name, and (4) from using their Confession of Faith.

This suit and several others of like import brought in like manner, in the States of Indiana, Missouri, Texas, and may be in some other states are now pending.

All of them are earnestly resisted by Cumberland Presbyterians, who in self-defense and for self-protection have also brought several suits, which are likewise pending.

We cannot believe that the majority of your great Church have sanctioned this cruel and relentless course of oppression and wrong which is being pursued against us in the civil courts; or, if it has received that sanction heretofore, we cannot believe that upon sober second thought you will permit a continuance thereof in the future.

Your Church does not need our property; and even if it did, you, as Christian people, could not afford, if allowed, to take it from us. It is not yours and you ought not to claim it or to want it.

Our Church needs its own property and cannot well afford to do without it. Therefore, unless forced to that extremity by (21) the courts, which we do not look for, our Church will never surrender its property to your Church. We greatly deplore litigation, even in self-defense and for self-protection; yet litigation is better than tame submission to a great wrong and so great a deprivation.

Our people would not despair, however, if the worst should come to the worst, and our Church, at the end of the prolonged litigation in every state, should find itself stripped of every house of worship and every vestige of other property, which is not expected; but they would trust, implicitly and confidently, the same God who so abundantly blessed the founders of our beloved Church, to bless them in like manner and enable them in due season to erect other houses of worship and acquire other necessary property.

Now would anyone feel sure that our despoilers would enjoy the fruits of such a victory over us.

We can better afford to have our property wrested from us than others can take it. Though worth contending for to the last extremity, this property is not indispensable to the continued life and usefulness of our Church. Cumberland Presbyterianism rests on a firmer foundation than that, and will survive these conflicts, property or no property. On the other hand, who can foresee or who will have the boldness to predict that our property, taken from us in the name of your Church and in its possession, would not prove to be like the wedge of gold in Achan's Tent?

You will not longer be misled or deceived by the interested declaration that the opposition among Cumberland Presbyterians to the so-called union and reunion is insignificant, and that it will soon pass away. The events of the last twelve months, so palpable before your eyes, have completely disproved that boastful assertion. Nor will future persistence in the unsanctified course of wrong and oppression and attempted coercion, if allowed by you, result in any gain to your Church or in the destruction of our Church. "But the more they afflicted them, the more they multiplied and grew."

Already the religious sensibilities of this whole country, if not of the entire world, have been shocked by this unfortunate and unnecessary conflict. It has brought discredit upon the cause of religion and apparently retarded the growth of our Master's Kingdom in those localities where the strife has been (22) greatest. It is the mistake, not to say sin, of the present age. But the Cumberland Presbyterians have been powerless to prevent it. Nothing was left them but resistance. They preferred to stay where they were. Their consciences would not permit them to do otherwise. They entreated their brethern not to leave them, or, if leave they must, to

go in peace. Their entreaties were disregarded; and they were told in effect that they must go too, notwithstanding their convictions, or failing to do so that, must be stripped of their houses of worship, their church name, and their Confession of Faith. The only alternative left them was and is resistance of ecclesiastical extinction. They chose the former, and by the Lord's help will maintain it. Who in this liberty-loving country can blame them? The right of self-defense and of self-protection is a sacred right the world over.

Finally, there is abundant room for both of these great Churches and abundant work for each of them to do, as separate and independent organizations of Christian men and women.

Union without unity would be worse than no Union at all.

It would be dishonoring God and Man. Unity in this instance is an impossibility. This has been demonstrated. It was self-evident from the start.

Your houses of worship and other property are yours; your Church name, organization, and Confession of Faith are yours; and no one can take any of them away from you.

Ours are ours, and we deny the right of anyone to take them from us.

As to all of these and in mutual recognition of their inavoidability in the future, we invoke the peaceable and unselfish spirit that moved the heart and controlled the action of Abram when he said to Lot: "Let there be no strife, I pray thee, between me and thee, and between my herdmen and thy herdmen; for we are brethern."

JOE H. FUSSELL,
J. L. GOODKNIGHT,
WM. H. ROBISON,
J. B. TALLEY,
J. J. McCLELLAND

Committee.

(43)

On motion, the General Assembly adjourned to meet at Corsicana, Texas, on the third Thursday in May, 1908, at 11 o'clock a. m. Closing prayer by the Rev. J. L. Hudgins.

Doxology and benediction by the Rev. N. F. Gill.

A. N. ESHMAN, , Moderator.

J. L. GOODKNIGHT, Stated Clerk and Treasurer.

8. The defendants offer from said printed abstract of record, the "Answer to the letter from Dickson, Tenn.," beginning with page 883 and continuing to and including the 18th. line of page 886 thereof from the Minutes of the General Assembly of the Presbyterian Church, 1907.

VIII. ANSWER TO THE LETTER FROM DICKSON, TENN.

Columbus, Ohio, May 24, 1907.

To the Rev. T. H. Padgett and Others, meeting at Dickson, Tenn., May 16th, 1907.

Brethern:—The General Assembly of the Presbyterian Church in the United States of America has received your telegram of greet-

ings, the fraternal and Christian sentiments of which we cordially reciprocate.

We have also in hand your communication protesting against the Reunion and Union of the Presbyterian Church of the U. S. A. and the Cumberland Presbyterian Church, which Reunion and Union was constitutionally completed May 24, 1906, by the General Assemblies of both Churches.

Replying to your protest, this first General Assembly of the Reunited Church records its deep regret that you and those associated with you have thus far declined to concur in the constitutional action of the majority of the Presbyteries and the two-thirds majority of the General Assembly of the former Cumberland Presbyterian Church in favor of the Reunion. We hope that when you know the full significance of the Reunion and the full design and import of the steps that led up to it, you will recognize the wisdom of yielding to the legally expressed will of those who have long been your brethren in the Lord, and that you will join us in work for the salvation of souls and the winning of the world to righteousness, in the spirit of Jesus Christ. Believing that strife for the perpetuating of denominational Churches of the same faith and order, Churches which ought to be one in name and fact, is unwise, we rejoice in the present Reunion, and shall pray and labor for Reunion with other Presbyterian Churches.

We had not heard until your communication announced it, that anybody had claimed or induced others to believe that the Presbyterian Church in the U. S. A. had abandoned the Westminster Confession of Faith. This is not true. The fact was in easy view of all, and nobody could have obscured it, if it had been attempted, that the Reunion was effected upon the doctrinal basis of the Westminster Confession of Faith as revised in 1903 and the other doctrinal standards of the Presbyterian Church in the U. S. A.

We think that your refusal to accept this Reunion is the result of misunderstanding. Proof is found in the fact that you intimate that one of the reasons for your failure to accept the terms of Reunion is that you did not believe that the Westminster Conference of that one of the reasons for your failure to accept the terms of Reunion as revised in 1903 was regarded by this Church as being in practical accord with the Confession of Faith of the former Cumberland Presbyterian Church. We emphasize that the General Assembly and the Presbyteries of this Church, in adopting the Plan of Reunion, declared that there was sufficient agreement between the systems of doctrine of the two Churches to warrant this Union, a Union honoring alike to both. We reiterate this statement in the most solemn manner.

We further draw your attention to the quotations you make from the Pastoral Letter which was addressed to you by the Decatur Cumberland Presbyterian General Assembly. These are not justly described by you when you state that they are "misleading and unjustifiable," nor do we sympathize with you in characterizing the conduct of those Cumberland Presbyterians who have accepted the Union as being a "cruel and unsanctified course of wrong and oppression." Your additional charge against these pure and earnest

men as "despoilers" whose purpose it is to "wrest" from you property to which you and your associates are entitled, is altogether unwarranted. In this connection (280) it is well to advise that we and you endeavor to observe the obligations of Christian courtesy.

Like yourselves, we regret that your unwillingness to accept the Reunion, and your appeal to the Courts, have rendered it necessary to ask the Courts of several States to determine the property question involved. It has been repeatedly announced by the friends of the Reunion in the former Cumberland Presbyterian Church and by the Reunited Church, that it is not the purpose of these suits, and it is not the design of any, to take away from former Cumberland Presbyterians who protest against the Reunion any property or other right to which they are legally or morally entitled.

Your assumption that all the property of the former Cumberland Presbyterian Church belongs to you and your associates is untenable in both law and morals. We shall be careful ourselves to follow, in all our relations to property and other matters, those equitable and reasonable principles which are given for our guidance in the Word of God, and to act towards you as becomes brethren in the Lord.

Brethren, there is a large work to be done for our common country, in the name and for the sake of our Lord and Savior Jesus Christ. There is in the heathen world an open door for united effort for its redemption. We tender to you a hearty invitation to accept the Reunion, and to co-operate with us in all Christian work. Come with us and we will do you good, and our united labors will be a blessing to our country and to the world.

In behalf of the General Assembly.

WM. HENRY ROBERTS,
IRA LANDRITH,
CHARLES MANTON,
ROBERT S. DAVIS,
E. G. POLK.

9. The defendants offer from said printed abstract of record the title page and opening and adjourning orders of the Minutes of the General Assembly of the Cumberland Presbyterian Church at Corsicana, Texas, in 1908, being pages 893, 894 and including 8 lines on page 895 thereof.

EXHIBIT "Q"

(Being title page and opening and adjourning orders of the Minutes of the General Assembly of the Cumberland Presbyterian Church, 78th Meeting, Corsicana, Texas, May 21-26, 1908.)

TITLE PAGE

MINUTES

OF THE

GENERAL ASSEMBLY

OF THE

CUMBERLAND PRESBYTERIAN

CHURCH

SEVENTY-EIGHTH MEETING.

Corsicana, Texas, May 21-26, 1908.

OPENING ORDER.

First Day, Thursday—Forenoon Session.

May 21st, 1908, 11:00 a. m.

The Seventy-eighth General Assembly of the Cumberland Presbyterian Church convened pursuant to adjournment, in the First Methodist Episcopal Church, through the courtesy of the pastor and official board, on the Third Tuesday in May (21), at 11:00 o'clock a. m., A. D. 1908.

OPENING EXERCISES

Rev. S. C. Lockett, of Corsicana Presbytery, read Psalm 37 as a Scripture lesson, after which Rev. T. M. Hendricks, of Elk Presbytery, Synod of Tennessee, led the Assembly in prayer. The opening sermon was preached by the Moderator, Rev. A. N. Eshman, of New Hope Presbytery, Synod of Mississippi, from the text Rom. 13:14.

CONSTITUTING PRAYER.

After the sermon had been preached the Moderator called the Assembly to order, and the Constituting Prayer was offered by Rev. J. T. Barbee, of Owensbro Presbytery.

RULE SUSPENDED

On motion the standing rule for popular meeting under the direction of the Board of Home Missions was suspended.

SPECIAL HOUR

On motion tonight, 8 p. m., was made a special hour, at which time the Assembly will hear addresses of welcome from the pastors, the legal bar and the citizens of Corsicana

RECESS.

On motion the Assembly took recess until 3 p. m. Prayer by Rev. F. A. Brown, Presbytery of Chicasaw.

FINAL ADJOURNMENT

On motion the, Assembly adjourned to meet in Bentonville Arkansas, for its 79th regular meeting, on the Third Thursday in May, A. D. 1909, 11 o'clock a. m. The closing prayer was offered by Rev. N. F. Gill, of Los Angeles Presbytery.

F. H. PENDERGAST, Moderator.

J. L. GOODKNIGHT, Stated Clerk.

10. The defendants offer from said printed abstract of record pages 896 to the 12th line of page 903, inclusive, thereof, being title pages, opening and adjourning orders of the respective Minutes of the General Assembly of the Cumberland Presbyterian Church, at Bentonville, Ark., in May, 1909, and at Dickson, Tenn., May 1910, and at Dickson, Tenn., May, 1907., and the admission as to the meeting of said General Assembly at Evansville, Indiana in May, 1911, and its adjournment to meet at Warrensburg, Missouri, in May, 1912

EXHIBIT "R".

(Being title page, opening order and adjourning order of Minutes of General Assembly of the Cumberland Presbyterian Church, 79th meeting, Bentonville, Ark., May 20-26, 1909.)

TITLE PAGE

MINUTES

of the

GENERAL ASSEMBLY

of the

CUMBERLAND PRESBYTERIAN

CHURCH

SEVENTY-NINTH MEETING

Bentonville, Arkansas, May 20-26, 1909.

OPENING ORDER.

Minutes of the Seventy-ninth General Assembly of the Cumberland Presbyterian Church, Held at Bentonville, Arkansas, May 20-26, 1909.

First Day, Thursday—Forenoon Session.

May 20, 1909, 11:00 a. m.

The Seventy-ninth General Assembly of the Cumberland Presbyterian Church convened pursuant to adjournment in the Cumberland Presbyterian Church, Bentonville, Arkansas, on the Third Thursday in May (20th), at 11:30 o'clock a. m., A. D. 1909.

OPENING EXERCISES.

The Assembly joined with the choir in singing Hymn 212, "Holy, Holy, Lord God Almighty," after which Rev. J. L. Hudgins, of Ogion Presbytery, Synod of West Tennessee, read as a Scripture lesson the Twenty-third Psalm, and led the Assembly in prayer.

Judge F. H. Prendergast, the retiring Moderator, delivered the opening address of the Assembly, on the subject, "The Power of Knowledge." Theme: "Christian Education."

CONSTITUTING PRAYER

The Constituting Prayer was offered by Rev. W. M. Murray, Presbytery of Lincoln, Synod of Illinois.

RECESS.

On motion the Assembly took recess until 2:30 p. m. Prayer by Elder Robert S. Hudson.

FINAL ADJOURNMENT

On motion the Assembly adjourned to meet at Dickson, Tennessee, the Third Thursday in May, 11.00 a m., A. D. 1910. Prayer by Rev. M. G. Milligan, Sr.; Doxology and Benediction by Rev. M. M. Smith, Logan Presbytery.

J. T. BARBEE, Moderator.

J. L. GOODKNIGHT, Stated Clerk and Treasurer.

Hon W. C. Caldwell, Counsel for Plaintiffs: We desire to offer in evidence exactly the same thing for the year 1910, to-wit, the title page and opening and adjournment orders of the Minutes of the General Assembly of the Cumberland Presbyterian Church in its 80th meeting, held _____, marked for identification Exhibit "S," which here appears in words and figures as follows, to-wit:

EXHIBIT "S."

(Being the title page, opening and adjournment orders of "Minutes of General Assembly of the Cumberland Presbyterian Church, 80th meeting, Dickson, Tenn., May 19-24, 1910.")

TITLE PAGE.

MINUTES

of the

GENERAL ASSEMBLY

of the

CUMBERLAND PRESBYTERIAN
CHURCH

EIGHTIETH MEETING

Dickson, Tenn., May 19-24, 1910.

OPENING ORDER

Minutes of the Eightieth General Assembly of the Cumberland Presbyterian Church, Held at Dickson, Tennessee, May 19-24, 1910.

First Day, Thursday—Forenoon Session.

May 19, 1910, 11 a. m.

The Eightieth General Assembly of the Cumberland Presbyterian Church convened pursuant to adjournment in the Cumberland Presbyterian tent, Dickson, Tennessee, and the Third Thursday in May, (19th) at 11 a. m. A. D. 1910.

OPENING EXERCISES

The Vaughn Symphony Quartette, of Lawrenceburg, Tennessee, sang the opening song of the Assembly, "In the Resurrection." After the Holy Manna," sung by the Assembly, Rev. R. A. Ashburn, of Knoxville Presbytery, Synod of Tennessee, read as a Scripture lesson the fifth chapter of Romans and led the Assembly in prayer.

Rev. J. T. Barbee, the retiring Moderator, preached the opening sermon from texts Romans 5:12, 19, and Mathew 14:28, 29.

CONSTITUTING PRAYER.

The Constituting Prayer was offered by Rev. W. J. Lackey, Presbytery of Dallas-Bonham, Synod of Texas.

RECESS.

On motion the Assembly took recess until 2:30 p. m. Prayer by Rev. J. M. Wyckoff.

ADJOURNING ORDER.

FINAL ADJOURNMENT.

On motion the Assembly adjourned to meet the Third Thursday in May, 1911, at 10:30 a. m., in Evansville, Indiana. After singing "God Be With You Till We Meet Again," Dr. J. H. Hedrick offered the closing prayer and benediction.

JOE H. FUSSELL, Moderator.

J. L. GOODKNIGHT, Stated Clerk and Treasurer.

Hon. W. C. Caldwell, Counsel for Plaintiffs: We desire to offer in evidence the same thing from the Minutes of the General Assembly of the Cumberland Presbyterian Church for the year 1907, which is marked Exhibit "T," and here appears in words and figures as follows, to-wit:

EXHIBIT "T,"

(Being title page, opening order and adjourning order of "Minutes of General Assembly of the Cumberland Presbyterian Church. Seventy-seventh meeting. Dickson, Tennessee, May 16-21, 1907")

TITLE PAGE
M I N U T E S
of the
G E N E R A L A S S E M B L Y
of the
C U M B E R L A N D P R E S B Y T E R I A N
C H U R C H
S E V E N T Y - S E V E N T H M E E T I N G
Dickson, Tennessee, May 16-21, 1907.
O P E N I N G O R D E R

Minutes of the Seventy-seventh General Assembly of the Cumberland Presbyterian Church, Held at Dickson, Tenn., May 16 to 21st 1907.

First Day, Thursday—Forenoon Session.

May 16th, 1907, 1.30 a. m.

Pursuant to its own adjournment the General Assembly of the Cumberland Presbyterian Church was convened for its Seventy-seventh meeting at the birthplace of the church in Dickson County, Tennessee, on the Third Thursday in May, 1907, at 10:30 o'clock a. m.

DEVOTIONAL EXERCISES AND OPENING SERMON.

The Moderator, the Rev. J. L. Hudgins, made explanation of the occasion, after which the Rev. R. D. Shook, by the Moderator's request, led in a brief, fervent prayer.

The Moderator read Luke 6:12-23, and delivered a sermon from the text Luke 6:17—"And He came down with them and stood in the plain."

O P E N I N G P R A Y E R.

The opening prayer of the Assembly was offered by the Moderator, the Rev. J. L. Hudgins, and Assembly declared duly constituted.

R O L L O F C O M M I S S I O N E R S.

The Stated Clerk then called the roll of Commissioners whose credentials were properly attested. Those present were found to be:

Ministers—Berry, H. W.; Crutcher, G. W.; Davis, C. A.; Dunn, C. U.; Durham, J. L.; Folsom, J. W.; Hendrix, J. H.; Henderson, B. H. Hill, J. A.; Hudgins, J. L.; Johnson, E. M.; Lackey, W. J.; McLesky, Joe; Mann, A. J.; Mason, R. L.; Miller, R. D.; Milligan, M. G.; Nation, T. B.; Norment, W. M.; Rudolph, Elmus; Shook, R. D.; Simmons, J. W.; Sloop, M. L.; Smith, M. M.; Stines, I. V.

Ruling Elders—Bell, R. V.; Davidson, W. J.; Engelbright, J. W.; Flaniken, C. W.; Jenkins, B. R.; McClellan, J. J.; Odle, A. C.; Odom, Jno. L.; Riddle M. V.; Sitton, Spencer P.; Slaughter, W. R.; Taylor, J. W.—12.

Ministers present, 25. Ruling Elders present, 12. Total Commissioners present, 37.

Adjourned to meet in Dickson at 3:00 o'clock p. m.

The following was offered by the Rev. E. M. Johnson and was adopted:

"Whereas, It is neither convenient nor practical to continue the sessions of this General Assembly in this house and locality; therefore

Resolved, That we adjourn to meet at 3 o'clock p. m., today in prepared tent in the town of Dickson, Tennessee."

The session was closed with prayer by the Rev. R. D. Miller, and General Assembly adjourned by Moderator.

FINAL ADJOURNMENT.

On motion the General Assembly adjourned to meet at Corsicana, Texas, on the Third Thursday in May, 1908, at 11 o'clock a. m. Closing prayer by the Rev. J. L. Hudgins.

Doxology and benediction by the Rev. N. F. Gill.

A. N. ESHMAN, Moderator.

J. L. GOODKNIGHT, Stated Clerk and Treasurer.

Hon. W. C. Caldwell, Counsel for Plaintiffs: We would like to have an admission here regarding the meeting of the General Assembly of the Cumberland Presbyterian Church in its meeting for the year 1911, as the Minutes for that year have not yet been printed.

The Court: It is admitted and agreed that the same General Assembly of the Cumberland Presbyterian Church met on the Third Thursday in May, 1911, at Evansville, Indiana, according to the adjournment at Dixon the transaction of its business in the regular way, it adjourned to meet again on the Third Thursday in May, 1912 at Warrensburg, Missouri

11. The defendants offer from said printed abstract the ordo solutus found at page 912 thereof, being from the Minutes of the General Assembly of the Cumberland Church for 1899, as follows.

"Resolved, That this General Assembly affirms its unequivocal adherence to the teaching of our confessional faith and catechism in the order of the doctrines of repentance, faith, and regeneration, and that any arrangement, logical or otherwise, which places regeneration in order before repentance and faith, displaces faith as the foundation of salvation, and is inconsistent with the system of doctrines of the Cumberland Presbyterian Church."

12. The defendants offer from said printed abstract of record, beginning at page 914, thereof, down to and including the 14th, line on page 918 thereof, the "Extract from the "The Old Log House," a history and defense of the Cumberland Presbyterian Church by T. C. Blake, D. D."

II.—ITS THEOLOGICAL POSITION.

The Cumberland Presbyterian Church claims to occupy what it dominates the "Medium System of Theology," a middle ground between Calvinism and Arminianism. The two latter systems (Calvinism and Arminianism), as we all know, are regarded as the extremes of theology. It is also claimed by the advocates of these systems that there is no medium ground; that every one must either be a Calvinist or an Arminian in his religious belief, else he is nothing; but such an assertion, when we analyze it, is absurd—might as well say that there is no territory between the North and South poles, or that there is no space between the extreme ends of a platform. How could those two systems be the extremes of theology without having this intermediate area—this medium ground?

But let us examine those systems (Calvinism and Arminianism), and see if there is not a theological medium ground.

1. The Doctrine of Election. "Calvinism" teaches that election is unconditional. "Arminianism" teaches that there is no election in this life. "Medium System" teaches that there is an election, but that it is conditional.

2. The Doctrine of Salvation. "Calvinism" teaches that salvation is unconditional to sinners, but certain to Christians "Arminianism" that salvation is conditional to sinners, but uncertain to Christians. "Medium System" teaches that salvation is conditional to sinners, but certain to Christians.

3. The Date of Election. "Calvinism" teaches that the date of election is before man was created. "Arminianism" teaches that the date of election is not prior to the death of the Christians, if indeed it occurs then. "Medium System" teaches that the date of election is the moment when the sinner is regenerated.

4. The Extent of the Atonement. "Calvinism" teaches that Christ died for only a part of the human race—that salvation is not possible to all, and that none but those who were "elected from the foundation of the world" will be saved. "Arminianism" teaches that the atonement of Christ was made for all mankind—that salvation is possible to all; but, as Christians may fall from grace, it is not certain that anyone will be saved. "Medium System" teaches that the atonement was made for all mankind—that salvation is possible to all, and that every one who has been truly regenerated will be saved.

5. The Perseverance of the Saints. "Calvinism" teaches that perseverance depends principally upon the immutability of the decree of unconditional election. "Arminianism" teaches that perseverance depends principally upon the good works of the creature. "Medium System" teaches that perseverance depends, not upon the immutability of the decree of unconditional election, nor upon works of the creature, but upon the love of God, the merits of Christ, the abiding of the Spirit, and the covenant of grace.

Other points could be given wherein these three systems differ, but surely these are sufficient to show any unprejudiced reader that there is a medium ground between Calvinism and Arminianism. On that medium ground the Cumberland Presbyterian Church stands; and it rejoices to know that its foundation is broad and secure. Nor do we hazard the truth in saying that not only the Cumberland Pres-

byterian Church stands upon this medium ground, but that nineteen-twentieths of the Christian world to-day really occupy the same position.

How rare to find a Calvinist who adopts all the sentiments of Calvin? And how rare too, to find an Arminian who adopts all the sentiments of Arminius? Instead, then, of finding no ground upon which to stand between these extremes, we find a vast area—an area large enough to hold not only Cumberland Presbyterians, but also the great body of professing Christians throughout the world. The people can find that medium ground, although theologians may not be able to do so.

III. A GENERAL STATEMENT OF ITS DOCTRINES.

For a full and extended exhibit of the doctrine of the denomination, together with the Scripture authority therefor, the reader is referred to the Confession of Faith of said Church. Still, it is not considered out of place to give here a very brief synopsis or outline.

Passing by the catalogue of doctrine in which all orthodox Christians agree—such as the existence of God, the Trinity, the authenticity of the Bible, Creation, Providence, the Fall of Man, etc., etc.—the Cumberland Presbyterian Church holds to the following doctrines: That Christ died for the whole human race; that the atonement is sufficiently broad to embrace in its provisions every son and daughter of Adam; that the Holy Spirit strives with all; that the sinner is saved by the imputed righteousness of Christ; that faith is the condition upon which salvation is bestowed; that every truly regenerated soul will be saved; that all infants dying in infancy are regenerated and saved by Christ, through the Spirit, so also are others, who have never had the exercise of reason, and who are incapable of being outwardly called by the ministry of the world; that water baptism is not for the remission of sin, but is simply a sign and seal of the covenant of grace; that dipping the person into the water is not necessary, but that baptism is rightly administered by pouring or sprinkling water upon the person; that the Church of Jesus Christ is composed of believing parents and their children; that the sacrament of the Supper should be administered to all Christians of good standing in their respective churches.

The foregoing synopsis is peculiarly Cumberland Presbyterian, inasmuch as no other church on earth teaches these doctrines as a whole. Moreover, all these points have been discussed and enforced in their appropriate places in this little book. Can any unbiassed mind, with the Bible in his hand, object to these doctrines?

11. The defendants offer in evidence from the printed abstract of record in Missouri Valley College et al., the portions of the Joint Report on Union, beginning with the 27th line of page 723 thereof, and continuing to and including the third line on page 730 thereof, being the report to the General Assembly of the Cumberland Presbyterian Church for the year of 1904, and taken from the Minutes of said body for said year, as follows:

2. THE JOINT REPORT ON UNION.

As the second part of our report we submit the following Joint Report on Union:

The Committee on Church Cooperation and Union of the Presbyterian Church in the United States of America and the Committee on Fraternity and Union of the Cumberland Presbyterian Church, after a (62a) free and full interchange of views, with continued supplication for divine guidance, unanimously recommended to their respective General Assemblies for their consideration, and if they deem proper, for their adoption, the accompanying papers, viz.:

- I. Plan of Reunion and Union of the two Churches.
- II. Concurrent Declarations to be adopted by the respective General Assemblies meeting in 1904.
- III. Recommendations.

I. PLAN OF REUNION AND UNION OF THE TWO CHURCHES.

We believe that the Union of Christian Churches of substantially similar faith and polity would be to the glory of God, the good of mankind, and the strengthening of Christian testimony at home and abroad. We believe that the manifest providential developments and leadings in the two Churches since their separation, together with present conditions of agreement and fellowship, have been and are such as to justify their Reunion.

Therefore, we cordially recommend to your respective General Assembly that the reunion of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church be accomplished as soon as the necessary steps can be taken, upon the basis hereinafter set forth.

1. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church Los Angeles, Cal., May 21st., 1903, and the Cumberland Presbyterian Church whose General Assembly met in the First Cumberland Presbyterian Church, Nashville, Tenn., May 21st, 1903, shall be united as one Church, under the name and style of the Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers, which the separate Churches now possess.

2. The Union shall be affected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

3. Each of the Assemblies shall submit the foregoing Basis of Union to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question.

"Do you approve of the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian

Church in the United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?

(63a)

Each Presbytery shall, before the tenth day of May, 1905, forward to the Stated Clerk of the Assembly with which it is connected, a statement of its vote on the said Basis of Union.

4. The report of the vote of the Presbyteries shall be submitted by the respective Stated Clerks to the General Assemblies meeting in 1905, and if the General Assemblies shall then find and declare that the foregoing Basis of Union has been approved by the constitutional majority of the Presbyteries connected with each branch of the Church, then the same shall be of binding force, and both Assemblies shall take action accordingly.

II. CONCURRENT DECLARATIONS.

As there are matters pertaining to the interests of the Church, which shall manifestly require adjustment when the Reunion shall have been accomplished, and concerning which it is highly desirable that there shall be a previous good understanding, the two Assemblies agree to adopt the following concurrent declarations, as in their judgment proper and equitable arrangements and agreements.

1. In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such agreement now exists between the system of doctrine held in common by these Churches, and of the divine favor and blessing that have made this common faith and service effectual.

It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement, which is part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that "the ordination vow of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures." This liberty is specifically secured by the Declaratory Statement, as to Chapter III and Chapter X, Section 3, of the Confession of Faith. It is recognized also that the doctrinal deliverance contained in the Brief Statement of the Reformed Faith, adopted in 1902 by the General Assembly of the Presbyterian Church in the United States of America, "for a better understanding of our doctrinal beliefs," reveals a doctrinal agreement favorable to Reunion.

2. All the ministers and churches included in the two denominations shall be admitted to the same standing in the United Church which they may have held in their respective connections up to the consummation of the Reunion.

(64a) 3. The boundaries of the several Presbyteries and Synods shall be adjusted by the General Assembly of the United Church.

4. The official records of the two churches during the period of separation shall be preserved and held as making up the history of the one Church.

5. As soon as practicable after the union shall have been effected, the General Assembly shall reconstruct and consolidate the several permanent committees and boards, which now belong to the two Assemblies, so as to represent with impartiality the views and wishes of the two bodies constituting the reunited Church.

6. The institution of learning, together with the endowment and other property, real and personal, owned by them, which are now under the control of the Cumberland Presbyterian Church, shall remain in charge of and be controlled by the Board of Trustees, or other managers, respectively, now in charge of such institutions, endowment and property, or by their successors similarly appointed or elected; and no greater control of such institutions, their property or affairs, shall be exercised by the General Assembly, or other ecclesiastical court or body, of the reunited Church, than is now exercised by the General Assembly, or other ecclesiastical court or body, of the Cumberland Presbyterian Church. Provided, that the governing board of any of said institutions of learning shall be at liberty to enter into such special arrangement or agreement with the ecclesiastical body controlling it as may enable said institution to preserve its integrity and maintain its present policy. And also provided, that nothing in this declaration shall affect the relationship or control of any of the institutions of learning now connected with the General Assembly, or other ecclesiastical court or body, of the Presbyterian Church in the United States.

7. The corporate rights now held by the two General Assemblies and by their boards and committees shall be consolidated and applied for their several objects as defined and permitted by law.

8. It should be regarded as the duty of all our judicatories, ministers and people to study the things which make for peace, to guard against all needless and offensive references to the causes which have divided us, and to avoid the revival of past issues.

III. RECOMMENDATIONS.

1. It is recommended that such a change be made in the Form of Government of the Presbyterian Church in the United States of America as will allow additional or separate Presbyteries and Synods to be organized in exceptional cases, wholly or in part, within the territorial bounds of existing Presbyteries or Synods respectively, for a particular race or nationality, if desired by such race or nationality.

2. The foregoing Basis of Union and eight Concurrent Declarations shall be submitted to the respective General Assemblies of 1904, and the above Recommendation No. 1 shall be submitted to the General (65a) Assembly of the Presbyterian Church in the United States of America meeting in 1904, and this entire plan of union shall be operative, when said Basis of Union, Concurrent Declarations and Recommendation No. 1 shall have been adopted in their entirety, and where necessary by Presbyterial action.

12. The defendants also offer the action of said Assembly on last above mentioned, found in said printed abstract beginning with

the 6th line on page 731 thereof, and continueing to and including the 3rd line on page 733 threof.

After the reading of the foregoing report, Dr. S. M. Templeton moved the adoption of the following paper, and the motion was duly seconded, whereupon it was unanimously agreed that the discussion of this paper be made the special order for next Tuesday morning at 10 o'clock:

Resolved, 1. That the foregoing Report and Supplemental Report of the Committee on Presbyterian Fraternity and Union, appointed by the General Assembly in 1903, be received and spread upon the minutes of this General Assembly, and that the included Joint Report on Union be adopted; that the Basis of Union be and is recommended to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

Resolved, 2. That the Moderator and the Stated Clerk be instructed to submit the Basis of Union, contained in said report, to the Presbyteries of the Cumberland Presbyterian Church, in the usual constitutional manner, upon receiving official notification of the adoption of the said Joint Report on Union by the General Assembly of the Presbyterian Church in the United States in America.

RECESS.

It was then ordered that the Assembly take recess until 3 o'clock p. m., and the session closed with prayer by Dr. B. G. Mitchell

(43) SIXTH DAY, WEDNESDAY—NIGHT SESSION.

May 25, 8 o'clock p. m.

The Assembly met and the session was opened with prayer by the Rev. U. W. McMillan.

CONTINUATION OF DISCUSSION OF ORGANIC UNION.

On motion, it was determined that the Assembly would hear one more speaker upon each side of the question in debate, and (44) that then the vote should be taken. Elder J. H. Fussell made the closing argument for the negative and Dr. S. M. Templeton closed for the affirmative.

ROLL CALL AND THE VOTE ON ORGANIC UNION.

On the calling of the roll, the yeas and nays having been called for, the vote on Dr. Templeton's paper offered on last Friday forenoon (see page 30), the vote was as follows:

(48)

On the proposition to submit and recommend the plan of Union and Reunion to the Presbyteries, 236 votes were cast, of which two-thirds, or 158 votes, were necessary to carry the measure. As will be seen from the foregoing exhibit, the total affirmative vote was 162 and the total negative vote was 74, therefore the Moderator announced that the measure had been carried by four votes more than was required by the Constitution.

13. The defendants offer in evidence from said printed abstract of record last above referred to, the Joint Report on Reunion and Union in the General Assembly of the Cumberland Presbyterian Church for the year of 1906, together with the action of said General Assembly thereon, as the same appears in said printed abstract of record, beginning with the 27th line on page 815 thereof, down to and including page 832 thereof, the same being taken from Minutes of said Assembly for said year of 1906.

JOINT REPORT ON REUNION AND UNION.

The Committee on Church Co-operation and Union of the Presbyterian Church in the U. S. A., and the Committee on Fraternity and Union of the Cumberland Presbyterian Church, earnestly recommend to their respective General Assemblies for adoption the following preamble and resolutions:

Whereas, The Presbyterian Church in the United States of America and the Cumberland Presbyterian Church have, from time to time since their separation, made efforts looking toward Reunion of the latter with the former Church; and,

Whereas, The General Assembly of the Presbyterian Church in the United States of America, which met in 1903, and the General Assembly of the Cumberland Presbyterian Church, which convened in the same year, each appointed a committee having in view a Reunion and Union of the said two Churches; and,

Whereas, said committees, after conferring with each other, agreed upon a plan and basis of Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, (65) and, by a Joint Report, presented the same to their respective General Assemblies which convened in 1904, and recommended its adoption; and,

Whereas, The General Assembly of the Cumberland Presbyterian Church of 1904, by the constitutional two-thirds vote, adopted said report, including the plan and basis of Reunion and Union to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval (Minutes, pages 30, 48, 62a) as provided in the following resolution:

Resolved, 1. That the foregoing report and supplemental report of the Committee on Presbyterian Fraternity and Union, appointed by the General Assembly in 1903, be received and spread upon the Minutes of this General Assembly, and that the included Joint Report on Union be adopted; and that the Basis of Union be and is recommended to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

Resolved, 2. That the Moderator and the Stated Clerk be instructed to submit the basis of Union contained, in said report, to the Presbyteries of the Cumberland Presbyterian Church, in the usual constitutional manner, upon receiving official notification of the adoption of the said Joint Report on Union by the General Assembly of the Presbyterian Church in the United States of America.

The Plan or Basis of Union referred to in said resolution is defined in Article I, Section 2, of the Joint Report on Reunion and Union, and was submitted to the Presbyteries of the Cumberland

Presbyterian Church, as provided in Section 3, in the following words:

"Do you approve of the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, on the following basis: The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church, in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice;" and,

Whereas, Each one of the 114 Presbyteries of the said Church, except the Presbytery of Florida, did, before the 10th day of May, 1905, forward to the Stated Clerk of said General Assembly a statement of its action on said basis of Reunion and Union, which statements were submitted by the stated clerk to that Assembly; and,

Whereas, Said General Assembly adopted the following resolution.

Be It Resolved, That this General Assembly does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church have voted approval of the Reunion and Union of said Churches upon the basis set forth in said Joint Report, and does find and declare that said Reunion and Union has been constitutionally agreed to by the Cumberland Presbyterian Church, and that the said basis (66) of Union has, for the purpose of the Union, been constitutionally adopted (Minutes 1905, pages 39 and 56); and,

Whereas, The General Assembly of the Presbyterian Church in the United States of America, at its session in 1904, also duly adopted said Joint Report, including the plan and basis of Reunion and Union therein contained, and did submit the basis of Reunion and Union to the Presbyteries of that Church for their approval or disapproval (Minutes 1904, page 130), in the following words:

"Do you approve of the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testament shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice?"; and,

Whereas, 236 of the 241 Presbyteries of that Church did each, before the 10th day of May, 1905, forward to the stated clerk of that Assembly a statement of its action on said basis of Reunion and Union, which statements were submitted by said stated clerk of that Assembly a statement of its action on said basis of Reunion and Union, which statements were submitted by said stated clerk to the General Assembly of the said Presbyterian Church, which convened on the 18th day of May, 1905; and,

Whereas, That Assembly did adopt the following declaration, to-wit.

"This Assembly having received and duly examined the vote of its Presbyteries on the basis of Union of the Presbyterian Church in

the United States of America and the Cumberland Presbyterian Church, does hereby find and declare that more than the required two-thirds majority of its Presbyteries have approved the basis of Union submitted to them by the Assembly of 1904, to-wit: "The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice"; and that the Presbyterian Church in the United States of America has complied with all of the requirements of the plan of Union adopted by the Assembly of 1904 (see Joint Report, Minutes of 1904, page 135 et seq.) and this Assembly declares its readiness to take action accordingly"; and,

Whereas, The Moderator of said Assembly made the following declaration, to-wit:

"I hereby declare that Overture No. 8 sent down by the Assembly of 1904 to the Presbyteries, in the form set forth at pages 119 and 136 in the minutes of said Assembly, has been adopted by more than the required two-thirds vote in the affirmative and accordingly constitutes the basis of the proposed Union between our Church and the Cumberland Presbyterian Church, according to the plan adopted by the Assembly of 1904 (Minutes of 1905, see page 67); and,

(67) Whereas, Official notice has been given to each Assembly of the action taken by the other Assembly, as hereinbefore recited, which notice has been officially acknowledged; now, therefore, be it,

Resolved, 1. That the effect of the above-recited action is:

(a) That the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards, have been adopted by the Cumberland Presbyterian Church, in accordance with its constitution and in conformity with said plan and basis of Reunion and Union.

(b) That said Joint Report, including the plan and basis of Reunion and Union, concurrent declarations and recommendations therein contained, have been adopted by the constituted authorities and in conformity with organic law of both of said Churches.

(c) That the Reunion and Union provided for in said Joint Report and in this basis of Reunion and Union has been agreed to by the constituted authorities and in accordance with organic law of both of said Churches, and is binding, and will become fully effective and operative when and as hereinafter declared.

Be It Further Resolved: 2. That immediately after the declaration hereinafter provided for shall have been made, said Confession of Faith and other doctrinal and ecclesiastical standards of the Presbyterian Church in the United States of America shall become effective and operative as to all the ministers, elders, deacons, officers, particular churches, judicatories, boards, committees and all other ecclesiastical organizations, institutions and agencies of the Cumberland Presbyterian Church.

3. That after the General Assembly of the Cumberland Presbyterian Church, meeting in 1906, shall have adjourned sine die, as a separate Assembly, the 119th General Assembly of the Presbyterian Church in the United States of America, which shall be composed of

representatives from all the Presbyteries of the reunited Church, shall, upon the dissolution of the General Assembly of the Presbyterian Church of the United States of America, meeting in 1906, be required by its Moderator to meet on the third Thursday of May, 1907, at 11 o'clock a. m., as provided for by the Form of Government of the Presbyterian Church in the United States of America. When said Assembly convenes it shall, until a new Moderator is chosen, be presided over by the Moderator of the Assembly of 1906, of the Presbyterian Church in the United States of America; and it is recommended that the opening sermon be preached by the Moderator of the General Assembly of 1906 of the Cumberland Presbyterian Church. The stated clerk of the General Assembly of the Presbyterian Church in the United States of America shall make up the roll of the Assembly of 1907, with the assistance of the stated clerk of the General Assembly of 1906, of the Cumberland Presbyterian Church.

4. That all the Presbyteries now constituting the Presbyteries of the two Churches, as they shall exist at the time for electing Commissioners of the General Assembly of 1907, shall elect Commissioners to that Assembly (68) on the basis of one minister and one elder for every twenty-four ministers or moiety thereof, as provided in the Form of Government of the Presbyterian Church in the United States of America.

5. That all boards, committees, trustees, and other ecclesiastical agencies now required to make report to the General Assembly of the Cumberland Presbyterian Church be and they are hereby directed to report hereafter to the General Assemblies of the Presbyterian Church in the United States of America.

6. Resolved, That in order to carry out the intent of Concurrent Declarations 5 and 7, to-wit:

(5) "As soon as practicable after the Union shall have been effected the General Assembly shall reconstruct and consolidate the several permanent committees and boards, which now belong to the two Assemblies, so as to represent, with impartiality, the views and wishes of the two bodies constituting the reunited Church."

(7) "The corporate rights now held by the two General Assemblies and by their boards and committees shall be consolidated and applied for their several objects, as defined and permitted by law."

The boards, committees, trustees, and other ecclesiastical or corporate agencies connected with either General Assembly, all of which have been hereinbefore directed to report hereafter or to the General Assembly of the Presbyterian Church in the United States of America or are in duty bound to report to said General Assembly, be and they are authorized and empowered if, and when, so directed by the General Assembly of the Presbyterian Church in the United States of America, to proceed according to law to orderly dissolution, in order that the funds, property and other assets by them, or any of them, now severally held be turned over to such appropriate corporate agencies, whether boards of committees, as may be permanently continued by the General Assembly of the Presbyterian Church in the United States of America; and such agencies, so permanently continued, are intended to be substituted trustees, to succeed to the

administration of such trust funds, as well as thereafter to receive and distribute the benevolent offerings of all the churches and congregations now belonging to either church.

7. Resolved, That the benevolent and missionary boards connected with the Presbyterian Church in the United States of America and the boards now connected with the General Assembly of the Cumberland Presbyterian Church, after the consummation of the Reunion and Union, are authorized and directed to confer with each other with a view to carrying on their work in harmony with each other during the year 1906-7, full report to be made by each of the above boards to the General Assembly of Presbyterian Church in the United States of America of 1907.

8. Whereas, Upon the declaration of Reunion and Union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, the Synods, Presbyteries, Sessions, ministers and congregations, now connected with the Cumberland Presbyterian Church will (69) have been received into and become incorporated with the Presbyterian Church in the United States of America; therefore,

Resolved (a), That the Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, with the assistance of the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, shall be, and hereby is, authorized and directed to place the names of the Synods and Presbyteries connected with the Cumberland Presbyterian Church, at the time of the completion of the Reunion and Union, on the roll of the Synods and Presbyteries of the General Assembly of the Presbyterian Church in the United States of America of 1906, to-wit.

I. Alabama—1, Birmingham; 2, Florida; 3, McGready; 4, Robert Donnell; 5, Springville; 6, Talledega.

II. Arkansas—1, Arkansas; 2, Bartholomew; 3, Burrow; 4, Fort Smith; 5, Little Rock; 6, Morrillton; 7, Mound Prairie; 8, White River.

III. Illinois—1, Chicago; 2, Decatur; 3, Ewing; 4, Foster; 5, Illinois; 6, Lincoln; 7, Mt. Vernon; 8, Rushville; 9, Sangaman; 10, Vandalia.

IV. Indiana—1, Indiana; 2, Morgan; 3, Wabash.

V. Indianola—1, Cherokee; 2, Chickasaw; 3, Choctaw; 4, Greer; 5, Oklahoma; 6, Washita.

VI. Iowa—1, Colesburg; 2, Iowa; 3, West Iowa.

VII. Kansas—1, Ft. Scott; 2, Kansas City; 3, Nebraska; 4, Rocky Mountain; 5, Wichita.

VIII. Kentucky—1, Cumberland; 2, Leitchfield; 3, Logan; 4, Louisville; 5, Mayfield; 6, Owenboro; 7, Princeton.

IX. Mississippi—1, Bell; 2, Mississippi; 3, New Hope; 4, Oxford; 5, Yazoo.

X. Missouri—1, Chillicothe; 2, Kirksville; 3, Lexington; 4, McGee; 5, Neosho; 6, New Lebanon; 7, Ozark; 8, Platte; 9, St. Louis; 10, Salt River; 11, Springfield; 12, West Plains; 13, West Prairie.

XI. Ohio—1, Athens; 2, Columbus; 3, Miami.

XII. Oregon—1, Portland; 2, Walla Walla; 3, Willamette.

XIII. Pacific—1, California; 2, Los Angeles; 3, Sacramento; 4, Tulare.

XIV. Pennsylvania—1, Allegheny; 2, Pennsylvania; 3, Pittsburgh; 4, Union.

XV. Tennessee—1, Chattanooga; 2, Clarksville; 3, Columbia; 4, Cookeville; 5, East Tennessee; 6, Elk; 7, Knoxville; 8, Lebanon; 9, McNinnville.

XVI. Texas—1, Abilene; 2, Amarillo; 3, Austin; 4, Bacon; 5, Bonham; 6, Brownwood; 7, Corsicana; 8, Dallas; 9, Denton; 10, Ft. Worth; 11, Greenville; 12, Gregory; 13, Louisiana; 14, Marshall; 15, Red River; 16, San Jacinto; 18, Snyder; 19, Texas; 20, Waco; 21, Weatherford.

XVII. West Tennessee—1, Hopewell; 2, Madison; 3, Memphis; 4, Obion.

(b) That official correspondence with said Synods and Presbyteries shall be conducted by the Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, with the assistance of the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church of 1906.

(c) That the list of churches and ministers of the Cumberland Presbyterian Church as existing at the time of the Reunion and Union and certified to by the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, be printed by the Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, in the minutes of the latter Church for 1906.

9. Resolved, That after the completion of the Reunion and Union, the board and committees now connected with the General Assembly of the Cumberland Presbyterian Church be entered in the list of the boards and committees of the General Assembly of the Presbyterian Church in the United States of America, and that under their appropriate names, with their members and officers, they be published in the minutes of the General Assembly of the Presbyterian Church in the United States of America for 1906.

10. Resolved, That the minutes of the General Assembly of the Cumberland Presbyterian Church for 1906 be published and distributed as usual, and that the Stated Clerk and Treasurer of the General Assembly of the Presbyterian Church for 1906 be and is hereby continued in office to complete his duties, including the statement of his financial accounts; final report to be made by him to the General Assembly of the Presbyterian Church in the United States of America of 1907.

11. Resolved, That the respective General Assemblies hereby recommend to the 119th General Assembly of the Presbyterian Church in the United States of America, that when steps shall be taken to adjust the boundaries of the several Presbyteries and Synods and to define and name the same, preference be given, as far as possible, to the names now used in the Cumberland Presbyterian Church, for its Presbyteries and Synods in the South and Southwest; that conversely, preference be given, as far as possible, to the names now used by the Presbyterian Church in the United States of America in the North and Northwest; and that in the border territory great care be taken to preserve any names that embody associations dear to either Church.

12. Resolved, That the General Assembly of the Presbyterian Church in the United States of America shall grant to its Board of

Education a measure of discretion in the application of the rules of Board to candidates who may be recommended for aid by Presbyteries previously in the Cumberland Presbyterian Church, until said Presbyteries, with their candidates, have fully adjusted themselves to the new conditions brought about by the Reunion and Union of the two Churches. This action shall be construed as extending to the students in the theological department (71) of Cumberland University, according to the provisions of Concurrent Declaration No. 6.

13. Whereas, The Committee on Fraternity and Union of the Cumberland Presbyterian Church have called attention to the responsibility, which its church has felt in the matter of aiding the Cumberland Presbyterian Church, Colored—its Educational Society having been charged by its General Assembly from year to year with certain duties in relation to said church—in order that this responsibility may be duly recognized by the reunited Church toward that particular denomination of colored people; therefore,

Resolved, That the Board of Missions for Freedom of the Presbyterian Church in the United States of America and the Educational Society of the Cumberland Presbyterian Church, both of which, after the completion of the Reunion and Union, will be agencies of the Presbyterian Church in the United States of America, are hereby authorized and directed to consider what may be done by the reunited Church for the further evangelization and education of the colored people in the South and Southwest; report to be made to the 119th General Assembly of the Presbyterian Church in the United States of America, meeting in 1907.

14. When this joint report, including its recitals and resolutions, shall have been adopted by the General Assembly of each of said Churches, and official telegraphic notice of such adoption has been received by each Assembly from the other, the Moderator of each Assembly is empowered and directed, in behalf of his General Assembly and Church, to declare and publicly announce in open session of said Assembly, and have it so recorded on its minutes, the full consummation of the Reunion and Union of said Churches, in the following words: "The Joint Report of the two Committees on Reunion and Union and the recitals and resolutions therein contained and recommended for adoption, having been adopted by the General Assembly of the Presbyterian Church in the United States of America and the General Assembly of the Cumberland Presbyterian Church, and official notice of such adoption having been received by each of the said General Assemblies from the other: I do solemnly declare and here publicly announce that the basis of Reunion and Union is now in full force and effect, and that the Cumberland Presbyterian Church is now reunited with the Presbyterian Church in the United States of America as one church, and that the official records of the two Churches during the period of separation shall be preserved and held as making up the history of the one Church."

And when said declaration shall have been publicly made in the General Assembly of the Cumberland Presbyterian Church, no business in that General Assembly shall be in order, except a motion to adjourn sine die, as a separate Assembly.

In behalf of the Cumberland Presbyterian Committee.

WM. H. BLACK, Chairman.

In behalf of the Presbyterian Committee.

WM. H. ROBERTS, Chairman.

With reference to the foregoing Joint Report on Reunion and Union please note (1) that the report is to be considered and adopted at your convenience, and (2) that the declaration contained in Resolution 14 is to be read by your Moderator at the close of your meeting, after which no business will be in order except a motion to adjourn sine die.

Respectfully submitted,

- W. H. BLACK, Chairman.
- E. E. BEARD.
- R. W. BINKLEY
- W. P. BONE.
- D. E. BUSHNELL.
- W. M. CRAWFORD.
- W. J. DARBY.
- B. P. FULLERTON.
- JOHN M. GAUT.
- JOSEPH E. JONES.
- IRA LANDRITH.
- J. A. McDONALD.
- J. H. MILLER.
- B. G. MITCHELL.
- R. L. PHELPS.
- W. E. SETTLE.
- R. M. TINNON.
- M. B. TEMPLETON.
- S. M. TEMPLETON.
- A. E. TURNER.
- J. M. HUBBERT.

Secretary of Committee.

(Elder T. W. Keller, a member of the Committee declined to sign the report.

J. M. HUBBERT, Secretary.)

After heading the foregoing report, Dr. S. M. Templeton offered the following resolution, which was adopted:

Resolved, That the foregoing report of the Committee on Fraternity and Union be accepted, and that the "Joint Report on Reunion and Union" contained in said report be adopted.

On this resolution the yea and nay vote was called for and was taken, with the following result (77).:

Ministers voting in the affirmative	85
Ruling elders voting in the affirmative	78
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Total affirmative vote	165
Ministers voting in the negative	50
Ruling elders voting in the negative	41
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Total negative vote	91
Affirmative majority	74

The moderator then declared that the resolution offered by Dr. Templeton had been carried, and that thereby the report of the Committee on Fraternity and Union had been accepted, and that the "Joint Report on Reunion and Union" contained therein, had been adopted.

14. The defendants offer in evidence from the Minutes of the General Assembly of the Presbyterian Church in the United States of America, for the year of 1901, at page 105, the following: "After the patient consideration given to this important subject, thus recorded and after a protracted, but harmonious discussion of the subject in all its bearings in its possible issues, it was determined to submit to the General Assembly to convene in Philadelphia, May 16, 1901, the following findings and recommendations, to-wit:

1. "That the returns indicate that the Church desires some change in its credal statement."

2. "That the returns indicate that no change is desired which would in any way impair the integrity of the system of doctrine contained in the Confession of Faith.

(B). We recommend that this committee be instructed to prepare and to submit to the next General Assembly for such disposition as may be judged to be wise, a brief statement of the Reformed Faith, expressed as far as possible in untechnical terms. The said statement is to be prepared with a view to its being employed to give information and a better understanding of our doctrinal beliefs, and not with a view to its becoming a substitute for or an alternative of our Confession of Faith.

(C). We further recommend that this Committee be instructed to prepare amendments of Chapter 3; Chapter 10, section 3; Chapter 16, section 7; Chapter 22, section 3, and Chapter 25, section 6, of our Confession of Faith, either by modification of the text or by declaratory statements; but as far as possible by Declaratory statements, so as to more clearly express the mind of the church: with additional statements concerning the love of God for all men, Missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrine set forth in our Confession of Faith and taught in the Holy Scriptures.

15. The defendants offer from the Confession of Faith of the Cumberland Presbyterian Church of the revision of 1883, sections 8, 9, 34, 35, 38, 48, 51, 54, 60, 61 110, with the headings under which they are found as follows:-

CONFESSION OF FAITH.

DECREES OF GOD

8. God, for the manifestation of his glory and goodness, by the most wise and holy counsel of his own will, freely and unchangeably ordained or determined what he himself would do, what he would require his intelligent creatures to do, and what should be the awards, respectively, of the obedient and the disobedient.

9. Thought all Divine decrees may not be revealed to men, yet it is certain that God has decreed nothing contrary to his revealed will or written word.

FREE WILL

34. God in creating man in his own likeness endued him with intelligence, sensibility and will, which from the basis of moral character, and render man capable of moral government.

35. The freedom of will is a fact of human consciousness, and is the sole ground of human accountability. Man, in his state of innocence, was both free and able to keep the Divine law, also to violate it. Without any constraint, from either physical or moral causes, he did violate it.

DIVINE INFLUENCE.

38. God, the Father, having set forth his Son, Jesus Christ, as a propitiation for the sins of the world, does most graciously vouchsafe manifestation of the Holy Spirit with the same intent to every man.

JUSTIFICATION

48. All those who truly repent of their sins, and in faith commit themselves to Christ, God freely justifies, not by infusing righteousness into them, but by pardoning their sins and by counting and accepting their persons as righteous; not anything wrought in them or done by them, but for Christ's sake alone; not by imputing faith itself, of any other evangelical obedience, to them as their righteousness, but by imputing the obedience and satisfaction of Christ unto them, they receiving and resting on him and his righteousness by faith.

REGENERATION.

51. Those who believe in the Lord Jesus Christ are regenerated or born from above, renewed in Spirit, and made new creatures in Christ.

54. All infants dying in infancy, and all persons who have never had the faculty of reason, are regenerated and saved.

PRESERVATION OF BELIEVERS.

60. Those whom God has justified, he will also glorify; consequently, the truly regenerated soul will not totally fall away from a state of grace, but will be preserved to everlasting life.

61. The preservation of believers depends on the unchangeable love and power of God, the merits advocacy and intercession of Jesus Christ, the

110. Church government implies the existence of church courts invested with legislative, judicial, and executive authority; and the Scripture recognize such institutions, some of subordinate and some of superior authority, each having its own particular sphere of duties and privileges in reference to matters ministerial and ecclesiastical, yet all subordinate to the same general design.

16. The defendants offer from the last mentioned book, from the Catechism of the Cumberland Presbyterian Church, as revised in 1883, the questions with answers thereto, numbered, 7, 21, 22, and 23, as follows.

CATECHISM.

7. What are the decrees of God?

The decrees of God are his wise and holy purpose to do what shall be for his glory. Sin not being for his glory, therefore he has not decreed it.

21. What are the evils of that estate into which mankind fell?

Mankind, in consequence of the fall, have no communion with God, discern not spiritual things, prefer sin to holiness, suffer from the fear of death and remorse of conscience, and from the apprehension of future punishment.

22. Did God leave mankind to perish in this estate?

No; God, out of his mere good pleasure and love did provide salvation for all mankind.

23. How did God provide salvation for mankind?

By giving his Son, who became man, and so was and continues to be both God and man, in one person, to be a propitiation for the sins of the world.

17. The defendants offer from said Cumberland Presbyterian Confession of Faith from the Constitution of the Cumberland Presbyterian Church, as revised in 1883, sections 4, 17, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 45, 48, 60, 67, 68, 73, 80, 89, 93, and with the heading under which said sections are found.

CONSTITUTION

PARTICULAR CHURCH.

4. A particular church consists of a number of professing Christians associated together for Divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.

Its officers are the ministers in charge, the ruling elders and the deacons.

Its jurisdiction is lodged in the church session, composed of the ministers in charge and the Ruling Elders.

17. Ruling elders, the immediate representatives of the people, are chosen by them, that, in conjunction with the ministers, they may exercise government and discipline, and take the oversight of the spiritual interests of the particular church, and also of the church generally, when called thereunto. It appertains to their office, both severally and jointly, to watch diligently over the flock committed to their charge, that no corruption of doctrine or of morals enter therein. Evils which they cannot correct by private admonition they should bring to the notice of the church session. They should visit the people at their homes, especially the sick; they should instruct the ignorant, comfort the mourner, nourish, guard, and instruct the children of the church; and all those duties which private Christians are bound to discharge by the law of charity are especially incumbent upon them by Divine vocation, and are to be discharged as official duties. They should pray with and for the people; they should be careful and diligent in seeking the fruit of the preached

word among the flock and should inform the minister in charge of cases of sickness, affliction, and awakening, and of all other which may need his special attention.

CHURCH COURTS.

24. It is necessary that the government of the church be exercised under some certain and definite form, and by various courts, in regular gradation. These courts are denominated Church Sessions, Presbyteries, Synods, and the General Assembly.

25. The Church Session exercises jurisdiction over a single church; the Presbytery over what is common to the ministers, Church Sessions and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their ministers, Church Sessions and churches; and the General Assembly over such matters as concern the whole church; and the jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to injury of the peace, purity or progress of the church; and, although such court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation.

All church courts shall be opened and closed with prayer.

CHURCH SESSIONS.

26. The Church Session consists of the minister in charge and two or more ruling elders of a particular church.

27. The Church Session is charged with maintaining the spiritual government of the church, for which purpose it is its duty to inquire into the doctrines and conduct of the church members under its care; to receive members in to the church; to admonish, suspend, or excommunicate those found delinquent, subject to appeal; to urge upon parents the importance of presenting their children for baptism; to grant letters of dismission, which when given to parents, shall always include the names of their baptized children; to ordain and install ruling elders and deacons when elected, and to require those officers to devote themselves to their work; to examine the records of the proceedings of the deacons; to establish and control Sabbath schools and Bible classes, with especial reference to the children of the church; to order collections for pious uses and church purposes; to take the oversight of the singing in the public worship of God; to assemble the people for worship when there is no minister; to concert the best measures for promoting the spiritual interests of the church; to observe and carry out the injunctions of the higher courts, and to appoint representatives to the higher courts, and require on their return a report of their diligence.

PRESBYTERY.

29. A Presbytery consists of all ordained ministers and one ruling elder from each church within a certain district.

Every particular church which is willing to support the gospel as God has prospered it shall be entitled to be represented by a ruling elder in Presbytery.

Every ruling elder not known to the Presbytery shall produce evidence of his regular appointment from the church he represents.

30. Any three ministers belonging to the Presbytery being met at the time and place appointed shall be a quorum competent to proceed to business.

31. The Presbytery has the power to examine and decide appeals, complaints and reference brought before it in an orderly manner; to receive, examine, dismiss and license candidates for the holy ministry; to receive, dismiss, ordain, install, remove and judge ministers; to review the records of the Church Session, redress whatever they may have done contrary to order, and take effectual care that they observe the government of the church; to establish the pastoral relation, and to dissolve it, at the request of one or both of the parties, or where the interests of religion imperatively demand it; to set apart evangelists to their proper work; to require ministers to devote themselves diligently to their sacred calling, and to censure and otherwise discipline the delinquent; to see that the injunctions of the higher courts are obeyed; to condemn erroneous opinions which injure the purity or peace of the church; to resolve questions of doctrine and discipline seriously and reasonably proposed; to visit particular churches to inquire into their condition, and redress the evils that may have arisen in them; to unite or divide churches, with the consent of a majority of the members thereof, and, for cause, to dissolve the relations between it and a particular church, which shall thereafter cease to be a constituent of the Cumberland Presbyterian Church, and forfeits all rights as such; to form and receive new churches; to take special oversight of vacant churches; to concert measures for the enlargement of the church within its bounds; in general, to order whatever pertains to the spiritual welfare of the churches under its care; to appoint representatives to the higher courts; and, finally, to propose to the Synod, or to the General Assembly, such measures as may be of common advantage to the church at large.

33. The Presbytery shall meet as often as once a year on its own adjournment, and when an emergency shall require a meeting sooner than the time to which it stands adjourned, the Moderator, or, in case of his absence, death, or inability to act, the Stated Clerk, shall, with the concurrence or at the request of two ministers and two ruling elders of different churches, call a special meeting. For this purpose he shall give notice—specifying the particular business of the intended meeting—to every minister belonging to the Presbytery, and to the Church Session of every particular church, in due time previous to the meeting, which shall not be less than ten days. And nothing shall be transacted at such special meeting besides the particular business for which the Presbytery has been thus convened.

34. If, for any cause, the Presbytery shall fail to meet at the

time and place to which it stands adjourned, it shall be the duty of the Moderator, or, in case of his absence, death, or inability to act, the Stated Clerk, or, in case of his absence, death, or inability to act any three ministers belonging to the Presbytery, to call a meeting as early as practicable, at such place as may be designated, for the transaction of the regular business; and for this purpose a circular letter shall be sent, as before prescribed, not less than ten days before the meeting.

SYNOD.

35. The Synod consists of all the ministers and one ruling elder from each church in a district comprising at least three Presbyteries. The Synod may be composed, at its own option, with the consent of a majority of its Presbyteries, either of all the ministers and one ruling elder from each church in the district, or of equal delegations of ministers and ruling elders selected by the Presbyteries on a basis and in a ratio determined in like manner by the Synod and its Presbyteries.

36. Five ministers, who are members of one or more Presbyteries composing the Synod shall constitute a quorum for the transaction of Synodical business, provided there be present at least one minister or one ruling elder from each of the three Presbyteries. Members of the different Presbyteries in Synod shall not be entitled to vote on questions of appeal before the Synod from their own Presbytery, nor on other questions immediately concerning their own Presbyterial action.

37. The Synod has power to receive and decide all appeals complaints, and references regularly brought up from the Presbyteries; to review the records of the Presbyteries, and to redress whatever they may have done contrary to order; to take effectual care that Presbyteries observe the government of the church, and that they obey the injunction of the higher courts to create, divide, or dissolve Presbyteries, when deemed expedient; to appoint ministers to such work, proper to their office, as may fall under its own particular jurisdiction—in general, to take such order with respect to the Presbyteries, Church Sessions and church under its care as may be in conformity with the principles of the government of the church and of the word of God, and as may tend to promote the edification of the church to concert measures for promoting the prosperity and enlargement of the church within its bounds; and, finally, to propose to the General Assembly such measures as may be of common advantage to the whole church.

39. The Synod shall meet as often as once in two years, on its own adjournment. If, for any cause the Synod shall fail to meet at the time and place to which it stands adjourned, it shall be the duty of the Moderator, or in case of his absence, death, or inability to act, the Stated Clerk, or, in case of his absence, death or inability to act, any three ministers entitled to membership in the Synod and belonging to different Presbyteries, to call a meeting as early as practicable at such place as may be designated, for the transaction of the regular business; and for this purpose a circular letter shall be sent to every minister and ruling elder to representation therein, not less than thirty day before the meeting.

GENERAL ASSEMBLY

40. The General Assembly is the highest court of this church, and represents in one body all the particular churches thereof. It bears the title of the General Assembly of the Cumberland Presbyterian Church, and constitutes the bond of union, peace, correspondence and mutual confidence among all its churches and courts.

41. The General Assembly shall meet as often as once every two years, at such time and place as may have been determined at its preceding meeting, and shall consist of commissioners from the Presbyteries in the following proportion: Every Presbytery shall be entitled to send one minister and one ruling elder; but if it consists of eighteen or more ministerial members, it may send an additional minister and ruling elder.

Each commissioner, before his name shall be enrolled as a member of the General Assembly, shall produce from his Presbytery satisfactory evidence of his appointment.

42. Any twenty or more of these commissioners, at least ten of whom shall be ministers, being met on the day and at the place appointed, shall be a quorum for the transaction of business.

43. The General Assembly shall have power to receive and decide all appeals, references and complaints regularly brought before it from the inferior courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the church to decide in all controversies respecting doctrine and discipline, to give its advice and instruction, in conformity with the government of the church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior courts observe the government of the church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the church; to create, divide, or dissolve Synods; to institute and superintend the agencies necessary in the general work of the church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefore; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church; to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds respectively; to superintend the affairs of the other churches and, in general, to recommend measures for the promotion of charity, truth and holiness throughout all the churches under its care.

48. When the ruling elder or deacon removes permanently beyond the bounds of the church which he serves, or is dismissed from his church by letter, his official relations shall be thereby dissolved, and the Church Session shall record the fact.

AMENDMENTS.

60. Upon the recommendation of the General Assembly, at a stated meeting, by two-thirds vote of the members thereof voting thereon, the Confession of Faith, Catechism, Constitution and Rules

of Discipline may be amended or changed when a majority of the Presbyteries, upon the same being transmitted for their action, shall approve thereof.

The other parts of the government—that is to say, the General Regulations, the Directory for Worship, and the Rules of Order—may be amended or changed at any meeting of the General Assembly by a vote of two-thirds of the entire number of commissioners enrolled at that meeting, provided such amendment or change shall not conflict, in letter or, spirit with the Confession of Faith, Catechism or Constitution.

REMOVING QUESTIONS FROM A LOWER TO A HIGHER COURT.

67. Every decision made by any church court except the highest is subject to the review of a superior court, and may be brought before it by general review and control, reference, appeal, or complaint.

GENERAL REVIEW AND CONTROL.

68. Every court above the Church Session shall, at stated intervals, as prescribed, review the proceedings of the court below. If any lower court shall omit to send up its records for this purpose, the higher court may order them to be produced, either immediately, or at a particular time, as circumstances may require.

REFERENCES.

73. A reference is a representation of a matter not yet decided, made by an inferior to a higher court, and must always be in writing.

APPEAL.

80. An appeal is the removal of a cause already decided from an inferior to a superior court, the effect of which is to arrest sentence until the matter is finally decided. It is allowable, after judgment, to either of the parties to the proceedings, but those who have not submitted to a regular trial are not entitled to appeal.

89. A Complaint is a recommendation made to a superior court against an inferior court. Any member of the church, submitting to its authority, may complain against every kind of decision, except where an appeal has been taken. A complaint shall not suspend, while pending, the effect of the decision of which the complaint is made. Notice of complaint shall be given in the same time and manner as notice of appeal.

DISSENTS AND PROTESTS.

93. A protest is a more solemn and formal declaration by a minority against the action of the majority, and is generally accompanied with the reasons upon which it is founded.

18. The defendants offer in evidence from said Confession of

Faith from the General Regulations of the Cumberland Presbyterian Church as revised in 1883, sections 10 and 11 thereof.

FORM OF COMMISSIONS.

10. For Synodical delegates the following or like form is recommended:

The Presbytery of, being met at, on the day of, A. D., doth hereby appoint ministers, or, in the absence of any one or more of them, then ministers, in order named; and ruling elders, or in the absence of one or more of them, then ruling elders, in the order named, to be the delegates on behalf of this Presbytery to the next stated meeting of the Synod of, to be held at, on the day of A. D., or wherever and whenever the said meeting may be held; to consult, vote and determine on all things that may come before that meeting, according to the principles of the government of the Cumberland Presbyterian Church and the word of God; and of their diligence herein they are to render and account on their return.

.....
Moderator.

.....
Clerk.

This commission is to be given to each one of the delegates, if demanded, and a copy forwarded immediately after the election to the Stated Clerk of the Synod.

11. Each commissioner, before his name shall be enrolled as a member of the General Assembly, shall produce satisfactory evidence of his appointment.

A commission in the following or like form shall be furnished each commissioner:

The Presbytery of in the Synod of, being met on the day of, A. D., at, doth hereby appoint ministers (postoffice address) and (postoffice address), or in case of the absence of either of them, then ministers (postoffice address), and (postoffice address) and (postoffice address), in the order named; and ruling (postoffice address), or, in case of the absence of either of them, then ruling elders (postoffice address), in the order named, to be commissioners on behalf of this Presbytery to the next stated meeting of the General Assembly of the Cumberland Presbyterian Church, to be held at, on the day of, A. D., or wherever and whenever the said meeting may be held, to consult, vote, and determine on all

things that may come before the same, according to the principles of the government of the Cumberland Presbyterian Church and the word of God; and of their diligence herein they are to render and account on their return.

Signed by order of the Presbytery.

.....,
Moderator.

.....,
Clerk.

19. The defendants offer in evidence from the Constitution of the Presbyterian Church, Sections 3, 4, 5, 6 and 7 of Chapter III; Sections 1, 2, 3 and 4 of Chapter X; Sections 1 and 4 of Chapter XI; Section 1 of Chapter XIII; Section 1, Chapter XIV; Sections 1 and 2, Chapters XVII, as follows:

CHAPTER 1.

III. Of God's eternal decree by the decree of God, for the manifestation of his glory, some men and angels are predestinated unto everlasting life and others foreordained to everlasting death.

IV. These angels and men thus predestinated and foreordained, are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished.

V. Those of mankind that are predestinated unto life, God, before the foundation of the world was laid, according to his eternal and immutable purpose, and the secret counsel and good pleasure of His will, hath chosen in Christ, unto everlasting glory, out of His mere free grace and love, without any foresight of faith or good works, or perseverance in either of them, or any other thing in the creature, as conditions, or causes moving Him thereunto, and all to the praise of His glorious grace.

VI. As God hath appointed the elect unto glory, so hath He, by the eternal and most free purpose of His will, foreordained all the means thereunto. Wherefore they who are elected being fallen in Adam, are redeemed by Christ, are effectually called unto faith in Christ by His Spirit working in due season; are justified, adopted, sanctified, and kept by His power through faith unto salvation. Neither are any other redeemed by Christ effectually called, justified, adopted, sanctified and saved, but the elect only.

VII. The rest of mankind, God has pleased, according to the unsearchable counsel of His own will, whereby He extendeth or withholdeth mercy as He pleaseth, for the glory of His sovereign power over His creatures, to pass by, and to ordain them to dishonor and wrath for their sin, to the praise of His glorious justice.

Chapter 10, Sections 1, 2, 3 and 4.

EFFECTUAL CALLINGS.

I. All those whom God hath predestinated unto life, and those only, He is pleased, in His appointed and accepted time, effectually to call, by His Word and Spirit, out of that state of sin and death, in which they are by nature, to grace and salvation by Jesus Christ,

enlightening their minds spiritually and savingly, to understand the things of God; taking away their heart of stone, and giving unto them a heart of flesh; renewing their wills, and by His almighty power determining them to that which is good effectually drawing them to Jesus Christ, yet so as they come most freely, being made willing by His grace.

II. This effectual call is of God's free and special grace alone not from anything at all foreseen in man, who is altogether passive therein, until, being quickened and renewed by the Holy Spirit, he is thereby enabled to answer this call, and to embrace the grace offered and conveyed in it.

III. Elect infants, dying in infancy, are regenerated and saved by Christ through the Spirit, who worketh when, and where, and how He pleaseth. So also are all other elect persons, who are incapable of being outwardly called by the ministry of the Word.

IV. Others, not elected, although they may be called by the ministry of the Word, and may have some common operations of the Spirit, yet they never truly come to Christ, and therefore cannot be saved, much less can men, not professing the Christian religion, be saved in any other way whatsoever, be they never so diligent to frame their lives according to the light of nature, and the law of that religion they do profess, and to assert and maintain that they may is very pernicious, and to be detested.

Chapter 11, Section 1 and 4:

JUSTIFICATION

I. Those whom God effectually calleth, He also freely justifieth not by infusing righteousness into them, but by pardoning their sins and by accounting and accepting their persons as righteous; not for anything wrought in them, or done by them, but for Christ's sake alone; not by imputing faith itself, the act of believing or any other evangelical obedience to them, as their righteousness, but by imputing the obedience and satisfaction of Christ unto them, they receiving and resting on Him and His righteousness by faith, which faith they have not of themselves; it is the gift of God.

IV. God did, from all eternity, decree to justify all the elect; and Christ did, in the fullness of time, die for their sins, and rise again for their justification; nevertheless they are not justified, until the Holy Spirit doth, in due time, actually apply Christ unto them.

Chapter 13, Section 1.

SANCTIFICATION.

I. They who are effectually called and regenerated, having a new heart and a new spirit created in them, are further sanctified, really and personally, through the virtue of Christ's death and resurrection, by His Word and Spirit dwelling in them; the dominion of the whole body of sin is destroyed, and the several lusts thereof are more and more weakened and mortified; and they are more and more quickened and strengthened, in all saving graces, to the practice of true holiness, without which no man shall see the Lord.

Chapter 14, Section 1:

SAVING FAITH.

I. The grace of faith, whereby the elect are enabled to believe to the saving of their souls, is the work of the Spirit of Christ in their hearts, and is ordinarily wrought by the ministry of the Word, by which also, and by the administration of the Sacraments and prayer, it is increased and strengthened.

Chapter 17, Section 1 and 2.

PERSEVERANCE OF THE SAINTS.

I. They whom God hath accepted in His beloved, effectually called and sanctified by His Spirit, can neither totally nor finally fall away from the state of grace; but shall certainly persevere therein to the end, and be eternally saved.

II. This perseverance of the saints depends, not upon their own free will, but upon the immutability of the decree of election, flowing from the free and unchangeable love of God the Father, upon the efficacy of the merit and intercession of Jesus Christ; the abiding of the Spirit and of the seed of God within them, and the nature of the covenant of grace; from all which ariseth also the certainty and infallibility thereof.

20. The defendants offer in evidence from Larger Catechism, from book last above referred to, questions and answers number 12, 13, 67, 68 and 75, as follows:

From Larger Catechism, questions and answers numbered 12, 13, 67, 68 and 75.

12. What are the decrees of God?

A. God's decrees are the wise, free and holy acts of the counsel of His will, whereby, from all eternity, He hath, for His glory, unchangeably foreordained whatsoever comes to pass in time, especially concerning angels and men.

13. What hath God especially decreed concerning angels and men?

A. God, by the eternal and immutable decree, out of his mere love, for the praise of his glorious grace, to be manifested in due time, hath elected some angels to glory; and in Christ hath chosen some men to eternal life, and the means thereof; and also, according to His sovereign power and the unsearchable counsel of His own will (whereby He extendeth or withholdeth favor as he pleaseth), hath passed by, and foreordained the rest to dishonor and wrath, to be for their sin inflicted, to the praise of the glory of His justice.

67. What is effectual calling?

A. Effectual calling is the work of God's almighty power and grace, whereby (out of His free and especial love to His elect, and from nothing in them moving Him thereunto) He does in His accepted time invite and draw them to Jesus Christ by His Word and Spirit; savingly enlightening their minds, renewing and powerfully determining their wills, so as they (although in themselves dead in sin) are hereby made willing and able, freely to answer His call, and to accept and embrace the grace offered and conveyed therein.

68. Are the elect only effectually called?

A. All the elect, and they only, are effectually called, although others may be and often are outwardly called by the ministry of the Word, and have some common operations of the Spirit; who for their willful neglect and contempt of the grace offered to them, being justly left in their unbelief, do never truly come to Jesus Christ.

75. What is sanctification?

A. Sanctification is a work of God's grace, whereby they whom God hath before the foundation of the world chosen to be holy are in time through the powerful operation of His Spirit, applying the death and resurrection of Christ unto them, renewed in their whole man after the image of God; having the seeds of repentance unto life and all other saving graces put into their hearts, and those graces so stirred up, increased and strengthened, as that they more and more die unto sin and rise unto newness of life.

21. The defendants offer from the Short Catechism, from book last above referred to, questions and answers 7, 9, 20 and 21, as follows:

7. What are the decrees of God?

A. The decrees of God are His eternal purpose, according to the counsel of His will, whereby for His own glory He hath fore-ordained whatsoever comes to pass.

9. What is the work of creation?

A. The work of creation is God's making all things of nothing, by the word of His power, in the space of six days, and all very good.

20. Did God leave all mankind to perish in the estate of sin and misery?

A. God, having out of His mere good pleasure, from all eternity elected some to everlasting life, did enter into a covenant of grace, to deliver them out of the estate of sin and misery, and to bring them into an estate of salvation by a Redeemer.

21. Who is the Redeemed of God's elect?

A. The only Redeemed of God's elect is the Lord Jesus Christ, who, being the eternal Son of God, became man, and so was, and continueth to be, God and man, in two distinct natures, and one person, forever.

The defendants offer from the Form of Government of the Presbyterian Church, from the book last above referred to, sections 4 and 5 of Chapter 12, as follows:

IV. The General Assembly shall receive and issue all appeals, complaints and references, that affect the doctrine or Constitution of the Church, and are regularly brought before it from the inferior judicatories, provided, that cases may be transmitted to the Permanent Judicial Commission of the General Assembly as prescribed in the Book of Discipline. The General Assembly shall review the records of every Synod and approve or censure them; it shall give its advice and instruction in all cases submitted to it, in conformity with the Constitution of the Church: and it shall constitute the bond of union, peace, correspondence and mutual confidence among all our churches.

V. To the General Assembly also belongs the power of deciding in all controversies respecting doctrine and discipline: of reproofing warning, or bearing testimony against error in doctrine, or im-

The defendants offer in evidence from the rules of order of the Cumberland Presbyterian Church, paragraph 9, under the heading "The Duty and Power of the Moderator," as follows:

To give on all questions a clear and concise statement of the object of the vote, which being taken, to declare how the question has been decided.

morality in practice, in any church, Presbytery or Synod; or erecting new Synods, when it may be judged necessary; of superintending the concerns of the whole church; of corresponding with foreign churches, on such terms as may be agreed upon by the Assembly and the corresponding body; of suppressing schismatical contentions and disputations; and in general of recommending and attempting reformation of manners, and the promotion of charity, truth, and holiness, through all the churches under their care.

22. The defendants offer in evidence from the certified transcript of record going to the Supreme Court of Tennessee from the Chancery Court at Nashville, Tennessee, in the case of the State of Tennessee on the relation of J. H. Zarecor et al., vs. W. A. Provine et al., from the deposition of J. A. Russell, questions numbered 7 to 18 inclusive together with the answers thereto from the direct examination of said Russell; also questions numbered 2, 9, and from 12 to 14 inclusive from cross-interrogatories from said witness together with answer thereto; as follows:

Q. 7 If you say you were present, state whether or not just before said vote was taken, and the Moderator was about to put the question, you arose on the floor of the Assembly, and asked the Moderator to construe said motion? A I did.

Q. 8 If you did arise on the floor of the Assembly, state whether or not you requested the Moderator to state whether a vote in the affirmative meant that the resolution of the union was to be submitted and recommended, or whether it only referred the question to the Presbytery Please state fully as to this? A. I ask if an affirmative vote meant only to submit, or did it recommend the proposed basis of union, and said while on the floor if it recommended I wanted to be counted as voting no, and if it only referred the question I would vote yes.

Q. 9 If you state that you did make such enquiry of the Moderator, please state what the Moderator replied? A. He replied that it only referred the question to the Presbyteries and did not recommend the proposed basis of union.

Q. 10 Upon the Moderator stating the effect of the affirmative vote, state whether you voted in the affirmative or the negative? A In the affirmative.

Q. 11 State whether or not there was a discussion among the Commissioners of the Assembly at the time, or just before, the vote was taken, as to the effect of the vote, and state whether or not the discussion among the members was as to whether an affirmative vote meant that the question was to be referred to the Presbyteries, and recommended by the Assembly? A. There was a discussion on the floor as to the effect of the vote in the affirmative whether it meant to refer only or both referred and recommended.

Q. 12 If you state there was such a discussion, state whether or not it was in open discussion on the floor, or merely a discussion among the several members of the Assembly in conversation? A. Both.

Q. 13 State whether or not the statement of the Moderator that a vote in the affirmative referred the question to the Presbyteries without recommendation caused yourself, and a number of

other members, to vote in the affirmative? A. It did and we would have voted no, if he had said it recommended the proposed basis of union.

Q. 14 If you say it did, state how many there were, and state the names of those you can call? A. There were eight. Rev. T. C. Newman, T. C. Hudson and myself. The names of the others I do not recall.

Q. 15 At what time of night was said vote taken? A. At a late hour, at eleven o'clock or after.

Q. 16 If you say it was taken at a late hour of the night session, state whether or not a number of commissioners of the Assembly had left the Assembly room? A. Did not return to the night session. Rev. Robertson told me that a number never returned after supper to the evening or night session because of the report that the vote would not be taken until morning. I heard others make like statement but their names I do not recall.

(Sustained As Robertson's Statement).

Q. 17 If you say a number had left the room, state how many? A. Those whom I heard speak of it said 8 or 10. I talked to two or three, who told me they stayed away, thinking the vote would not be taken that night.

Q. 18 State whether or not it was understood in the Assembly previous to the leaving of these members that a vote would not be taken on the question that night? A. I do not remember if the statement was made from the Moderator's chair or not, but I heard a number of persons in private conversation say that afternoon that the vote would not be taken until morning.

Q. 2 Did not the Moderator, Judge Settle, answer you that a commissioner voting for the pending resolutions favoring union would have a right later to vote against them in his Presbytery? A. After he said that we only referred the question by voting in the affirmative, and did not recommend the proposed basis of union, he went further and said that the Presbyteries would have a chance to vote for or against as they liked.

Q. 9 If you have stated that any statement made by the Moderator caused other members to vote in the affirmative, please state specifically how you got such information? A. I got this information by six of them, telling me so and the seventh one and I agreed if the Moderator said that an affirmative vote only submitted the question and did not recommend we would vote yes, and if recommended the proposed basis of union, we would vote no.

Q. 12 On the night of Wednesday, May 25, 1904, at the beginning of the session, was it not moved and carried that the Assembly would that night hear one more speaker upon each side of the question in debate, and that then the vote should be taken? A. That was done, but as to whether it was done after they had had some speeches, or done when the Assembly first met, I can not remember.

Q. 13 Did not the commissioners who left the Assembly room know that this action had been taken and that Capt. J. H. Fussell would close the argument for the anti-unionists? A. Judge Fussell closed the argument for the anti-unionists, but the commissioners with whom I talked were not at the evening session. When the aft-

ernoon session closed for supper, they said that they went to their boarding place, and did not return. They said that they went with the understanding that the question would not be voted on until next morning.

Q. 14 If you have testified to any understanding in the Assembly that no vote should be taken that night, please state who undertook to enter into such an understanding and how could it affect the plain rule of the Assembly? A. There was no rule of the Assembly, except as stated in question No. 12. As to the understanding in the Assembly that no vote would be taken that night, I do not remember whether it came from the Moderator, chair or how about that point, but know that it was talked by all that I heard speak of it.

23. The defendants offer in evidence from the record last above mentioned, from the deposition of F. H. Pendergast, questions numbers 4 to 21, inclusive from the direct examination of said witness together with answers thereto, as follows:

Q. 4 Where you present at Marshall, Texas, Presbytery of the Cumberland Presbyterian Church at the meeting of July, 1904? A. I was present then.

Q. 5 If you state that you were present, state whether or not when the union question was voted on in said Presbytery you were present? A. I was present when the union question was voted on.

Q. 6 Are you personally acquainted with Rev. C. B. Wellburn and Rev. W. B. McGee? A. I am and was then personally acquainted with C. B. Wellburn and W. V. McGee to whom the question I suppose refers.

Q. 7 If you state that you are so acquainted, state whether or not the said Wellburn and McGee were members of said Presbytery, and were acting and voting in the same? A. They were both then members of Marshall Presbytery and voted therein.

Q. 8 State whether or not said Wellburn and McGee in said session of said Presbytery voted in favor of the union? A. Each of them did so vote.

Q. 9 State whether or not said Wellburn subsequently moved to Bacon Presbytery of the Cumberland Presbyterian Church, and in the Fall of 1904 again voted in favor of the union? A. He moved to Bacon Presbytery and the printed Minutes of that Presbytery show he voted for union there.

Q. 10 If you have the Minutes of said Bacon Presbytery, showing that the said Wellburn voted in favor of Union, please file the same as Exhibit No. 1 to this your deposition? A. I attach the printed Minutes with my name and Notary's name on page 10.

Q. 11 State whether or not subsequent to July, 1904, and before the next meeting of the General Assembly at Fresno, 1905, said McGee removed from Marshall Presbytery, and became a member of Tulare Presbytery, and again voted for the union in said Tulare Presbytery? A. He did.

Q. 12 If you had any conversation with the said McGee, in which he stated that he voted for the union in Tulare Presbytery, state where and when it was, and the substance of what he said? A.

At Fresno, California, in May, 1905, I met W. V. McGee and we were discussing the matter of double voting which was then before the Assembly and he told me he had voted for union in that Presbytery.

(This question and the answer are excepted to as hearsay and incompetent and irrelevant). HAMILTON PARKS.

Q. 13 Were you present at the meeting of the General Assembly of the Cumberland Presbyterian Church at Dallas, Texas, in 1904? A. I was.

Q. 14 If you state that you were present, state whether or not you were a commissioner of said Assembly, and, if so, from what Presbytery? A. I was a commissioner from Marshall Presbytery.

Q. 15 Were you present when the vote was taken with reference to submitting the question of Union to the Cumberland Presbyterian Church with the Presbyterian Church U. S. A. to the Presbytery of the Cumberland Presbyterian Church. A. I was.

Q. 16 If you say you were present, state who was presiding over said Presbytery as Moderator? A. Elder W. E. Settle.

Q. 17 If you say you were present, state whether or not a commissioner of said Assembly, before said vote was taken, requested the Moderator to state, while he was in the chair, whether a vote in the affirmative meant a recommendation of the union, or merely meant a submission of the question to the Presbyteries? A. Two commissioners asked that question.

Q. 18 If you say that such request was made of the Moderator, please state the substance of the Moderator's reply? A. He stated that the object of the vote was only to send the matter of union to the Presbyteries to be voted on, and was not a recommendation.

(Questions 16, 17 and 18 and answers are excepted to as irrelevant and incompetent.) H. SPARKS.

Q. 19 State whether or not the reply of said Moderator induced a number of the commissioners to vote for the submission of the question to the Presbyteries? A. I can only answer that the Moderator's reply seemed to satisfy the inquiries and they voted for the resolution.

Q. 20 If you state that the Moderator announced in reply to said request that a vote in the affirmative meant to submit the question to the Presbytery, and did not imply a recommendation, say whether or not said statement was made loud enough for the members of the Assembly to hear and understand the propriety of such announcement? A. The Moderator's reply could be and was distinctly heard.

Q. 21 State any other facts pertinent to the issues above investigated, which, in your judgment, are material. A. With reference to the same person voting twice on the question of union, they claimed the right to do that, and the union members of the General Assembly declared they had the right to vote twice on that question.

24. The defendants offer in evidence from the same record last above mentioned from the deposition of A. W. Baldrige, questions numbered 5 to 7 inclusive from the direct examination of said witness

together with answers thereto; also questions numbered 2, and answer from cross examination of said witness, as follows:

Q. 5 If you have said that you were not present when said resolutions were voted on, please state why you were not present, and how you would have voted on said resolution if you had been present? A. I was not present for the reason that it had been decided by the unanimous vote of the General Assembly not to vote upon the Templeton resolution submitting the proposition for union to the Presbyteries till noon of the next day, after which the vote was really taken. I had no idea that the Assembly would vote on the resolution until the time agreed upon and fixed, and I was at my room and knew nothing about the vote till after it was over.

Q. 6 State whether or not you knew or heard of any understanding or agreement between the respective sides at that Assembly that the vote on said resolution would not be taken on the night on which it was taken.

Q. 7 Do you know of any misrepresentations or any other unfairness practiced by the union element at the Dallas Assembly? A. I considered it unfair for the union elements to take advantage of the fact that many of the other side were staying at their rooms under the impression that no vote would be taken till noon the next day, and reconsider and take the vote at midnight instead of waiting till noon the next day, as they had agreed to do. Another thing is that, as I understood it, the question was put to the Moderator as to whether or not the Templeton resolution was a resolution to simply refer the matters involved to the Presbyteries, or whether or not it was a recommendation under the constitution of the Church recommending the union and the Moderator answered that it was simply referring the question to the Presbyteries, and thereupon the resolution received a number of votes that would not have voted for it had they understood that the General Assembly was recommending the Union. If I am right about this, and I think I am, it was very unfair, and, I must say, very dishonest.

Q. 2 Were you present and on the floor of the Assembly during the morning session previous to the vote on the Templeton Resolution at night? If you say you were, what took place in the Assembly room? A. I was present. Among other things, there was a vote of the General Assembly, setting a time when they would vote upon the Templeton resolution. It was the unanimous vote of all commissioners present that they would take said votes at noon of the next day.

25. The defendants offer in evidence from the record last above mentioned from the deposition of J. J. McClellan, questions numbered 6 to 17 inclusive with answers thereto in direct examination of said witness.

Q. 6 State whether or not during the consideration of that resolution you heard Judge Fussell, or any other person, make a motion to set the time when a vote should be taken on the Templeton resolution, and, if you say you did, state the circumstances in detail? A. The meeting of the General Assembly during this discussion were held in part in the Christian Church on account of the

auditorium being larger than the one of the Cumberland Presbyterian Church, and in the afternoon of the day, on which the vote was taken that night, at the session of the Assembly, about the time they were about to adjourn, Judge Fussell got up near, where I was sitting and walked down the aisle to near the front, or about the altar, and made a motion, stating the reasons for it, that the time be set for the vote to be taken the next day, I think it was at noon, or at the time when the Assembly was to adjourn for a recess. This motion was seconded and put to the House and carried without a dissenting vote.

Q. 7 Did the Judge state his reasons for his motion? A. He stated that there a number of commissioners who were not very well some of them very old, and it was not convenient for them to be always present; that it was a matter of great importance, and it was desired by those interested, that notice should be given so that all commissioners might be present, when the vote would be taken.

Q. 8 Assuming that this occurred on Wednesday afternoon, was the vote taken Wednesday night? A. It was.

Q. 9 Were you present when the discussion closed and the vote was taken? A. I was.

Q. 10 State in detail, as near as you can remember, what took place between members of the Assembly and the Moderator with reference to the meaning of an affirmative vote on the Templeton resolution? A. To give the matter in detail, just about the time the vote was being taken, one of the members from California arose and said to the Moderator that he wanted to make an explanation as to his voting. He said personally that he was opposed to doing it, but he was instructed by his Presbytery to vote for it, and that he would for the union in that way. Just about that time there was a gentleman by the name of Russell, who was a commissioner, arose and said to the Moderator that he wanted to ask a question, and the Moderator told him to ask it. He said in substance—"there are eight of us who are not decided how we ought to vote" or wanted to vote; that they were opposed to the union, and if to vote for this motion meant for them to vote for the union they would have to vote against it, or would vote against it, but if they could vote to submit the question to the Presbyteries, as a mere matter of submission, that they were willing to vote that way, and they wanted to know of the Moderator whether or not to vote then for the motion pending would be to vote for the union. The Moderator hesitated in making an answer, and Mr. Hubbard, in a low tone of voice, said to him that the vote now would not be binding on them, that they could vote as they pleased in the Presbytery when they went home. I did not hear all that Mr. Hubbard said—I heard partly what he said. The Moderator answered then, and said that this was not a vote for union, but was merely referring it to the Presbyteries that they might express their wish on the question. And there was another gentleman, a commissioner to the General Assembly, whom I did not know at the time, arose and said—"there are four of us who are somewhat in the same attitude, we are not willing to vote for the union, and if our vote would be counted as for union, we would vote against the motion, but if it is simply to refer the matter to the Presbyteries for expression from them, we are willing to do that,"

and the Moderator remarked, in substance, that, the vote now was not a vote for Union, but was for a mere reference to the Presbyteries.

Q. 11 Where were you sitting with reference to the Moderator when this occurred? A. I was standing at the edge of the rostrum very close to the Moderator, not more than fifteen feet from him.

Q. 12 Did you afterward learn who the gentleman was who said there are eight of us, and so forth? A. I knew at the time he said there were eight that it was Russell. I afterwards learned that the other gentleman was Mr. Hurst.

Q. 13 Mr. Hurst is the gentleman who said there are four of us? A. Yes sir.

Q. 14 I forgot whether I asked you at the time, but I ask you now, were you present in the Assembly when the time for taking the vote was changed after Mr. Fussell had made the motion to take it on Thursday at noon? A. Yes sir, I was.

Q. 15 Did he protest at that time against the change of time? A. He did, stating the reason that the time had been fixed with reference to the taking of the vote, and it would be unfair to change the time without notice to those who might not be present.

Q. 16. What effect did that have on the Assembly or the Moderator? A. My recollection is there was some discussion of it but not very extensive—the vote was taken, of course, that night at the close of the day.

Q. 17 At the time that these questions were asked by Mr. Hurst and Mr. Russell, had the roll call begun? A. It was just about the time the roll call was commenced—I don't know whether they had many of the names called or not—I don't remember about that.

26. The defendants offer in evidence from the record last above mentioned from the desposition of John Stephens, questions numbered 9 to 28 inclusive with answers thereto from direct examination of said witness; also from the cross examination question 14 and answer thereto:

Q. 9 Were you in the Assembly Hall at any time when a motion was made by any commissioner fixing the time at which a vote should be taken on the Templeton resolution? A. I was.

Q. 10 State where you were, who made the motion, and what time fixed for taking the vote? A. We were in the Christian Church at Dallas, Texas, Capt. Fussell made the motion that the vote be taken the next day at eleven o'clock, and it was carried.

Q. 11 During what session of the Assembly was the motion by Capt. Fussell? A. Now, I couldn't give you that, it was probably about the third day. I don't remember though just exactly, I could—

Q. 12 Was it in the afternoon or forenoon? A. It was in the afternoon and we adjourned there at the Christian Church, because they wanted to use the house that night themselves, and went back to the First Cumberland Presbyterian Church at Dallas, Texas.

Q. 13 When was the vote taken on the Templeton resolution? A. It was taken that night at eleven o'clock.

Q. 14 Just after the debate closed? A. Yes sir.

Q. 15 Did you hear Judge Fussell at or about, the time the vote was to be taken make any protest with reference to the time of taking it? A. I did.

Q. 16 What did he say? A. He said that the motion was made and carried to vote the next day at eleven o'clock, and a great many commissioners were done gone to bed then.

Q. 17 What took place when the protest was made by Capt. A. A motion was made and carried directly after that, why he had the motion before the house when he protested, and they counted the vote that night after the debate closed, took the vote I mean, and he took the vote.

Q. 18 Do you know Rev. Mr. Russell, a Cumberland Presbyterian minister, who was in attendance on that Assembly? A. Yes sir, I stayed right by him, close to him.

Q. 19 The night the vote was taken? A. Yes sir.

Q. 20 If at, or about the time, the vote was taken you heard Mr. Russell address any question to the Moderator, state what he said? A. I did, he got up and asked the Moderator what they were going to vote, union or what; the Moderator stated that they were not voting the union, or basis of union, that they were merely going to hand it down to the Presbyteries, not recommendation.

Q. 21 Did you say anything to Dr. Russell at the time? A. Yes sir, I told him to do it, and he said he wasn't afraid of the brethren, he would trust the brethren.

Q. 22 After the vote was taken, what announcement was made? A. That the union had carried.

Q. 23 That the union had carried? A. Yes sir.

Q. 24 Do you know who made that announcement? A. I couldn't tell you, they kept a tally sheet, and they counted up and they claimed that they had the required number of votes, but I couldn't tell you just exactly who it was.

Q. 25 Did you hear the Moderator make any announcement with reference to the matter? A. I don't remember what he said—only this, I remember particularly he said he didn't want them to make no great display, you know, of the victory they had gained, I remember his saying that.

Q. 26 Do you remember what Mr. Russell said, if anything?

A. Mr. Russell got up and protested and said that he wanted his name and the seven others recorded against union.

Q. 27 What did the Moderator reply to that? A. Why, amongst the confusion I don't know exactly, I couldn't tell you, but probably he said it was too late.

Q. 28 What else, if anything, did Mr. Russell say? A. I don't remember that he said anything else, but just protested and wanted his name recorded as opposed to union, and the seven commissioners that were with him.

Q. 14 Have you charged your memory particularly with all these matters during these years? A. Yes sir, I charged my memory particularly from this fact; I was bitterly opposed to the union at the start and am yet, and I do not think it was fair play when the Moderator told Mr. Russell and that crowd and tried to keep them from doing that, I don't think it was fair play to tell them they were

not voting on the basis of union, and then cry out union as soon as the vote was taken.

27. The defendants offer in evidence from said record last above mentioned from the deposition of Joe H. Fussell questions numbered 10 to 15 inclusive; also 21, 22 and 23; also 29, 30 and 31, all from direct examination of said witness as follows:

Q. 10 State whether or not there was discussion as to the meaning of the vote on the Union question, or what is known as "Templeton Resolution," just before the question was submitted to the Assembly, and state how it arose and the facts and circumstances leading up to it? A. The vote was taken at night. The discussion was closed that night—the vote was taken immediately after the discussion had closed—the argument in the case, I mean. Well, I came at night, occupied the seat I usually occupied during the sessions of the Church. The first that I now remember about any discussion, whatever, was a motion to take the vote immediately after the argument closed that night. I opposed that motion, and gave my reasons for it, which were about these—At noon that day, I believe it was, or the afternoon, I don't remember which now, but any way while at a different church I had made the motion that the vote be taken to-morrow at noon, so that everybody would be present the time at which the vote would be taken. When the motion was made at night that the vote be taken immediately after, I objected because of the fact that I knew there were some who wouldn't be present that night, remaining out because of the fact that the vote would not be taken until to-morrow at noon, and because of the fact that I had stated to some, myself that the vote would not be taken until noon to-morrow. But that motion to take the vote prevailed. The next matter that I remember, and noticed particularly was, that one of the commissioners, who was seated to my left some little distance, asked the Moderator the question—another that I remember was Brother J. W. Russell—whether or not this question was to go to the Presbyteries for their approval or disapproval, or whether it was to be sent down on recommendation of the General Assembly. Now, I am not giving his exact words, but that was what he desired to know. The Moderator did not answer him promptly. I was watching it carefully, as I had been requested to keep on the floor and watch these things, and the Moderator finally answered him by saying that this is only submitted to the Presbyteries for their approval or disapproval. The commissioner replied—"We have eight who are opposed to union. We are willing that the question be submitted for the approval or disapproval of the Presbyteries, but we are opposed to the Union." About this time Brother Hurst, who was some way across to my left, said—"We have four who are opposed to the union but instructed by our Presbytery to vote to submit, if it is only for the approval of the Presbyteries." The Moderator made this remark; I think following that of Hurst—"If it were I", he said, "and I were opposed to union, I would vote to submit the question to the Presbyteries, and then vote against it when it comes up before the Presbyteries." That ended that, and I think there was nothing more said. The argument was after that—there were only two made that night,

and immediately after midnight the vote was taken.

Q. 11 How near the Moderator were you sitting, and in what position? A. I was—I kept during the meetings of the Assembly just about the same position in the Cumberland Presbyterian Church when we were in that Church, but we were not in that Church all the time, but was to the left, a little, of the Moderator, at what might be called the lefthand aisle, about half way from the pulpit to the wall—I suppose I was some 25 feet from him.

Q. 12 When Mr. Russell, or Mr. Hurst, asked the question with reference to the meaning of the vote on the Templeton Resolution, did the Moderator consult with anybody, or did anybody prompt the Moderator? A. I was watching carefully that answer to the commissioner from the Moderator, and, as I said, he hesitated a moment—the Stated Clerk, J. M. Hubbert, who was seated just behind him, turned his face to the right a little and in the rear of the Moderator—the Moderator turned his ear a little to the left, and Brother Hubbert—something was said in a whisper of course I did not hear a word, but immediately the Moderator made the reply to Russell.

Q. 13 He did not reply to either of these questions until the whispered conversation had been held between him and Mr. Hubbert? A. No. I believed at that time he had received some instructions from the Clerk, but it was so common for Hubbert to instruct the Moderator that I was really not at all surprised at it.

Q. 14 Mr. Hubbert was a Unionist, was he? A. Yes.

Q. 15 What position does he occupy with the Northern Presbyterian Church? A. I only know from information—some notices that I have seen, that he is probably occupying the position of Assistant Stated Clerk, I am not sure, of the General Assembly of that Church.

Q. 21 With reference to the motion to take the vote at noon the next day, state when that was made, and the circumstances under which it was made? A. I am not sure whether that motion was made at the adjourning hour at noon, or whether it was in the afternoon at adjourning time, but it was understood that we were to go back from that Church, which I think was the Christian Church, to the Cumberland. That night, just as they were about to adjourn, was the time I made the motion to “take the vote at noon to-morrow.” There was no discussion of the motion, and no dissenting voice. I remember that I stated at night—the motion was made that night to take it immediately after the discussion, and I stated that, I felt confident that, if we could get a full and fair vote we would win that question, and for that reason I asked that it be “noon to-morrow.”

Q. 22 Did you at the night session, when it was moved to have the vote immediately after the discussion closed, did you then complain of the unfairness of taking the vote without notice to those persons, who had not come there that night? A. I did—most emphatically.

Q. 23 State whether or not the Unionists sent out and got any of their commissioners to come after it was determined to take the vote that night? A. Well, I will answer as far as I know, to that—when the roll was called, I remember that some unionists answered,

who I did not believe were present, and when I went back to the hotel, there was a friend of mine, who was a unionist, I left sick in bed, and when his name was called he answered and voted—and when I went back I found him sitting in the hotel, and I went up to him and called him by name familiarly, and said—“Tom, I thought I left you in bed.” He said—“I was Joe.” “Well,” I said, “you voted all right,” and he said—“Yes, they sent for me and made me get up out of bed, and stated that if I did not go we would be beat.”

Q. 29 Was it or not the position then taken by the unionists that the vote for the resolution merely meant a submission to the Presbyteries? A. I can only answer that from that was said to me by various commissioners. That question, as far as I was concerned there was no argument at all. I had my opinion, and I was not arguing with any one, but members came to me and said that it had been said to them that this was only a submission, and that they were not opposed to a submission for approval or disapproval, and they gave me some names of unionists, I can't remember them now, who told them so. I don't remember just who they were now. I know I cautioned them against that. I said to them—I remember well, I said, and I tried to get to Mr. Russell to say to him before this occurred—“don't cast your vote upon that ground. You will find it will be different when this is over.”

Q. 30 I will ask you whether or not it was apparent to you, at that time, that it was the intention to secure the vote of the loyalists for the resolution under the representation that it was merely a submission, and that, after the vote had been taken, it would be claimed it was a recommendation? A. I felt that some of our brothers who were opposed to Union were deceived. That is exactly the way I felt about it, and tried to reach them and say to them that “you will find it otherwise when you cast the vote.”

Q. 31 By finding it otherwise, you meant that the Unionists would claim it was recommendation? A. Yes, I told them so.

28. The defendants offer in evidence from the record last above mentioned, from the deposition of T. A. Havron, questions numbered 40, 41; also 46 to 50 inclusive with answers thereto, from direct examination of said witness as follows:

Q. 40 State whether or not about the discussion was being had, or while the vote was being taken, or about to be taken, anyone on the floor of the Assembly asked the Moderator with reference to the scope and meaning of the motion they were voting on? A. I heard one of the commissioners announce to the Moderator what he was voting for.

Q. 41 What was said by the member on the floor, and that was said by the Moderator? A. Commissioner, Rev. Duncan Wallace, said that he wanted it clearly understood that he was voting for a reference of the resolution to the Presbyteries, and that he was not committing himself, and stated, at the time, that, personally, he was against it.

Q. 46 I will ask you whether or not there was a discussion on the floor of the Assembly, and among the members on the outside, as to whether or not that was a submission and recommendation to the

Presbyteries, or a mere reference to the Presbyteries? A. On the outside they were very persistent that it was merely a reference and recommendation that it should go before the Presbyteries, and that no member should assume to speak for himself. In bringing the question before the Assembly there wasn't much said—that question was only raised when they came to vote.

Q. 47 You say on the outside of it, it was understood that it was a recommendation and submission? A. That is what they insisted upon, a part of them—just a mere reference or submission, and not a recommendation.

Q. 48 How, in discussing the matter, how did they divide up on that—which side said it was recommendation and which submission? A. The union side insisted that it was a submission, and the other side was discussing and insisting as to whether or not they were to recommend it, or just a mere submission. In other words, they occupied this attitude—that it was just ready to get it before the Presbyteries—that those in opposition to the Union were more likely to vote for the resolution if it was understood that it was a mere reference and submission to the Presbyteries, not carrying with it the weight of a recommendation.

Q. 49 Did those favoring Union insist that that was the correct construction of the motion? A. They insisted that that was what they were doing.

Q. 50 That it was a mere submission? A. Yes sir, that's what they did. My reason for remembering that so distinctly was because I told those opposing it that, if they did that, as soon as the vote was taken, then the Unionists would insist that it was a recommendation.

29. The defendants offer in evidence from the record last above mentioned from the deposition of W. M. Robinson, questions 5 to 11 inclusive, with answers thereto, from examination in chief of said witness.

Q. 5 Were you present in the General Assembly during the discussion of a paper offered by Dr. S. M. Templeton, a copy of which is found on page 50 of the Minutes of the General Assembly of 1904, which referred to submitting the question of Union to the Presbyteries of the Cumberland Presbyterian Church? A. I was.

Q. 6 Were you present when the vote was taken upon said motion? A. I was.

Q. 7 If you say you were present, state whether or not you heard the question asked by a member of the General Assembly as to whether the resolution or motion merely referred the matter to the Presbyteries for their action on the same, or recommended the same to the Presbyteries?

Q. 8 If you say such an inquiry was made by a commissioner, state who was in the chair as Moderator, and who it was that asked the question? A. W. E. Settle.

Q. 9 State what the Moderator's reply was to the member that asked the question? A. "We are only voting to submit the question to the Presbyteries."

Q. 10 State whether or not the Moderator's reply was such as could be heard in all parts of the house, and whether the General Assembly was then in regular session. A. It could be heard distinctly in all the room; the Assembly was then in regular session.

Q. 11 State what was your understanding as to whether or not a vote was to be taken on the question the night the debate was finished or the next day? A. The talk was we would not vote until the next day, while other suggested we would vote that night.

30. The defendants offer in evidence the petition in the cause of Hugh Hayes et al., Plaintiffs, vs. David F. Manning et al., Defendants in the Circuit Court of Saline County, Missouri, together with the date of filing the same, from the printed abstract of record on appeal in said cause to the Supreme Court of Missouri, found at pages 1 to 26 inclusive of said record, as follows.

This cause was commenced by a petition filed on November 4, 1909, in the Circuit Court of Saline County, Missouri, which is in words and figures as follows:

Petition.

State of Missouri, County of Saline, ss.

IN THE CIRCUIT COURT OF SALINE COUNTY, MISSOURI.
JANUARY TERM, 1910.

Hugh Hayes, Azariah Peecher, James L. Russell, Ervin G. Utz, Quin N. Merrill, Robert C. Ewell, Guthrie E. Scrutchfield, Elders, and G. E. C. Sharp, Elder and Trustee of the Cumberland Presbyterian Church and Congregation at Marshall, Missouri, and Charles W. Peecher, Edward Earl Sharp and Robert Nuckles, Deacons of the Cumberland Presbyterian Church and Congregation at Marshall, Missouri, J. E. Courtner, Pastor of the said Church and Congregation and Thos. T. Cobbs, James M. Turner, Benjamin F. Garst, Charles H. Bradford, D. F. Scrutchfield, James M. Roberts, Taylor Nuckles, Richard Nuckles and others too numerous to mention, non-official members of said Church and Congregation, who sue for themselves and on behalf of all other persisting members of the said Church and Congregation, all residents of Saline County, Missouri, Plaintiffs,

vs.

David F. Manning, Wm. F. Sharp, John M. Penick, Albert McGinnis, A. J. Laughlin, John S. Jenkins, John L. Mahard, L. M. Morrow, and Henry Shirk, Elders, and George H. Althouse and J. J. Kirkpatrick, Elders and Trustees, and Wallace E. Grube Trustee of the Presbyterian Church in the United States of America at Marshall, Missouri, and the Congregation thereof, I. N. Evrard, Deacon of said Church and Congregation, Wm. F. McDaniel, and Edgar S. Place, non official members of said Church and Congregation, who are sued for themselves and all other non official members thereof to numerous to mention, residents of Saline County, Missouri, Defendants.

PETITION.

Plaintiffs respectfully state and represent to the Court that the residence and Church relationship of the parties to this suit are correctly recited in the caption above; that all of the Plaintiffs and those for whom they sue being too numerous to mention by name are members and communicants in good and regular standing of the Cumberland Presbyterian Church at Marshall, Missouri, and the congregation thereof; that the Defendants named and those whom it is intended they shall represent in this cause have by their own volition ceased to be members of that church and congregation and become members of the Presbyterian Church in the United States of America at Marshall, Missouri, and the congregation thereof, and thereby abandoned and lost all of their rights and privileges therein, official and non-official and denuded themselves of all powers and trusts in reference thereto and in the property thereof; that the Defendants have denounced all allegiance to the Cumberland Presbyterian Church at large and to the Cumberland Presbyterian Church and congregation at Marshall, Missouri, in particular, and declared themselves to have become members and communicants of the Presbyterian Church in the United States of America at Marshall, Missouri, and the congregation thereof, by means of a so-called union and merger of the Cumberland Presbyterian Church at large with and into the Presbyterian Church in the United States of America at large; that by such course on the part of said defendants and the continued adherence of the plaintiffs to the Cumberland Presbyterian Church at large and to the local church and congregation thereof at Marshall, Missouri, the plaintiffs have become the sole officers and members of the said local church and congregation and as such the exclusive legal and beneficial owners of its property conveyed to certain persons as trustees and in trust for the use and benefit of said local church and congregation of the Cumberland Presbyterian Church at Marshall, Missouri, the said property to be hereinafter described and the said conveyances to be hereinafter more particularly referred to and exhibited with this petition.

(In order that the Court may the more readily understand the matters of controversy between these plaintiffs and these defendants in reference to the said property, a brief historical sketch of the Cumberland Presbyterian Church at large and of the local Cumberland Presbyterian Church at Marshall, Missouri, will be hereafter given; as will also the origin, progress and result as the plaintiffs understand them of a movement looking to the absorption of the Cumberland Presbyterian Church at large, and locally with its ministry and membership and property, general and local, by the Presbyterian Church in the United States of America.

ORIGIN OF THE CUMBERLAND PRESBYTERIAN CHURCH.

"The Cumberland Presbyterian Church was organized in Dickson County, Tennessee, February 4, A. D. 1810. It was an outgrowth of the great revival of 1800—one of the most powerful revivals that this country has ever witnessed. The founders of the Church were Finis Ewing, Samuel King, and Samuel McAdow. They were ministers in the Presbyterian Church, who rejected the

doctrine of election and reprobation as taught in the Westminster Confession of Faith.

The Cumberland Presbytery, which was constituted at the time of the organization of the Church, and which originally consisted of only three ministers, was in three years sufficiently large to form three Presbyteries. These Presbyteries, in October, A. D. 1813, met at the Beech Church in Summer County, Tennessee, and constituted a Synod. This Synod at once formulated and published a "Brief Statement," setting forth the points wherein Cumberland Presbyterians dissented from the Westminster Confession of Faith. They were as follows:

1. That there are no eternal reprobates.
2. That Christ died not for a part only, but for all mankind.
3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.
4. That the Spirit of God operates on the world, or as co-extensively as Christ has made atonement, in such a manner as to leave all men inexcusable.

At this meeting of Synod too, a committee was appointed to prepare a Confession of Faith. The next year, A. D. 1814, at Suggs Creek Church, Wilson County, Tennessee, the report of the Committee was presented to Synod, and the revision of the Westminster Confession of Faith of the Cumberland Presbyterian Church. Subsequently the formation of the General Assembly took place.

This judicature, at its first meeting, A. D. 1829, at Princeton, Kentucky, made such changes in the form of government as were emanated by the formation of the new court.

In compiling the Confession of Faith, the Fathers of the Cumberland Presbyterian Church had one leading thought before them, and that was to so modify the Westminster Confession as to eliminate therefrom the doctrine of universal fore-ordination and its legitimate sequences, unconditional election and reprobation, limited atonement and divine influence correspondingly circumscribed. All the boldly-defined statements of the doctrine objected to were expunged, and corrected statements were made. But it was impossible to eliminate all the features of hyper-Calvinism from the Westminster Confession of Faith by simply expunging words, phrases, sentences or even sections, and then attempting to fill the vacancies thus made by corrected statements or other declarations, for the objectionable doctrine, with its logical sequences, prevailed the whole system of theology formulated in that book.

The compilers knew this, and they also knew that a book thus made must necessarily have some defects. Still they felt assured that they had prepared one which could not be fairly and logically interpreted without contradicting the most objectionable features of hyper-Calvinism; and they felt too, that they had formulated a system of doctrines which any candid inquirer after truth might understand. They did not, however, claim that the time would never come when there might be a demand for a re-statement of these doctrines, which would set forth more clearly and logically a system of theology believed and taught by the Cumberland Presbyterian Church. That time did come, and so general was the desire

throughout the Church to have the Confessions of Faith revised that at the General Assembly, which convened in the City of Austin, Texas, A. D. 1881, a paper was introduced looking to that end, and it was adopted by a unanimous vote.

In view of the great importance of the work, two committees were appointed, and it was made the duty of the first committee to review the Confession of Faith and Government, and of the second to review and revise the work of the first. The committee met at Lebanon, Tennessee, the seat of Cumberland University, where every facility could be enjoyed for such labors, having free access to a free library. After bestowing great labor upon their work, giving every item earnest and prayerful attention, the committees completed the tasks assigned them and the result of their labors were published in pamphlet form and in weekly papers of the Church for information, "that criticism might be made by those desiring to do so." The committee, after receiving these criticisms again met and remained in session for a number of days, giving careful and prayerful consideration to all the suggestions made. They then completed their work without a single dissent, and submitted the result to the General Assembly, which convened in the City of Huntsville, Alabama, A. D. 1882. That General Assembly, in "Committee of the Whole" considered with great patience and care every item in the entire book, taking a vote on each one separately, and at the close of each chapter or subject, taking a vote upon it as a whole.

In this way the entire book, from beginning to end, was carefully and prayerfully scrutinized, and necessary changes were made—the most of them verbal; and there was not in the final vote a single negative. Having completed its work, the General Assembly transmitted the book to the Presbyteries for their approval or disapproval. The reports from the Presbyteries to the next General Assembly which convened in the City of Nashville, Tennessee, A. D. 1883, showed that this work had been almost unanimously adopted. The General Assembly having reviewed these returns from the Presbyteries, formally declared said book to be the Confession of Faith and Government of the Cumberland Presbyterian Church."

The accuracy of the foregoing sketch is attested by the General Assembly itself, which, in the year 1885, ordered its insertion as a preface to the "Confession of Faith and Government" adopted in 1883. That was the last Confession of Faith and Government adopted by the Cumberland Presbyterian Church, and as plaintiffs insist, is now in full force and effect and binding upon the entire church and all of its parts. This book was prepared, considered and adopted with too much care and solemnity to be lightly considered and indifferently cast away only twenty-three years later. It is herewith filed as exhibit "A" to this petition, and as such made a part hereof for all necessary purposes, but not to be copied unless called for by the defendants.)

The Cumberland Presbyterian Church is only three months less than a century old. It has always been, and, as plaintiffs are informed and believe and allege now is a separate and independent voluntary religious association, controlled and governed by its Con-

fession of Faith and Government, as indicated in the sketch herein before quoted.

Though unincorporated itself some of the boards and institutions of the Cumberland Presbyterian Church are chartered under the laws of Tennessee, Kentucky and other States. From the time of its humble beginning in the year 1810, as aforesaid, to the meeting of its General Assembly in the month of May, 1906, at Decatur, Illinois, the Cumberland Presbyterian Church extended its influence and organization into numerous States; and at the latter time and place, as shown by the minutes of the General Assembly at that meeting, the Church then had 17 Synods, 114 Presbyteries, 1514 ordained ministers, 9614 ordained elders, 3914 ordained deacons, 2869 congregations, and a total membership of 185212.

Since that time, unfortunately, the peace and harmony of this church has been interrupted and its membership somewhat diminished, nevertheless it is still an active organization of Christians with a prosperous and useful future before it, as plaintiffs verily believe and allege.

The General Assembly of Nashville, Tennessee, in 1903, appointed a committee on Presbyterian fraternity and union to confer with like committees of other Presbyterian bodies, in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States. This committee reported to the General Assembly at Dallas, Texas, in 1904, that it had agreed with a like committee of the Presbyterian Church in the United States of America that each of the two committees should submit to its own General Assembly their joint report, favoring the re-union and union of these two churches in one, under the name of the Presbyterian Church in the United States of America, upon the doctrinal basis of its Confession of Faith, as revised, in 1903, and of its other doctrinal and ecclesiastical standards and upon certain conditions and recommendations contained in the report. The General Assembly at Dallas adopted that report by a close vote and a part of the basis of the union was referred to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval, this reference being conditioned upon the fact that the Moderator and stated clerk should thereafter be notified that the General Assembly of the Presbyterian Church in the United States of America had likewise adopted the said report.

The next General Assembly of the Cumberland Presbyterian Church in session at Fresno, California, in 1905, appointed a special committee to consider and report the result of the action taken by the Presbyteries of that Church in reference to the matter submitted to them a year before. This committee divided and submitted a majority and a minority report. The majority report was adopted by a vote of 135 to 110, after the rejection of the minority report by a vote of 135 to 111. The moderator declared the result of these votes accordingly. Both the reports recited that only 111 Presbyteries had expressed themselves, 60 of them voting approval and 51 disapproval. With the majority report was exhibited a tabulated statement showing that in the 111 Presbyteries there were 137 more Presbyterial votes disapproving than approving the scheme

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submitted to them. That is to say, the majority of the Presbyteries, as Presbyteries, voted approval, but of all the votes in the 111 Presbyteries a majority of 137 were against the scheme and for disapproval.

Many of the Presbyteries voting approval were among the smallest, numerically, in the whole Church, and many of these voting disapproval were among the largest Presbyteries in the whole Church, and the membership disapproving, though not called on to vote, was about three times as great as the part approving. The minority report denied that the scheme of reunion and union, so called, had been constitutionally agreed to and that the basis of union had been constitutionally adopted, though such was the statement of the resolution, set out at the conclusion of the majority report, and denied that the constitution of the Church authorized the adoption of such a scheme and made numerous objections to the consummation thereof. The said reports and exhibit and the action of the General Assembly thereon appear on pages 37-58 inclusive of the printed minutes for the year 1905, and the same are reproduced literally on pages 35-45 of a printed pamphlet called "Successive Steps," which is herewith filed as Ex. "B" and referred to for all proper purposes, but not to be copied unless called for by the defendants.

A protest assigning sixteen grounds of objection to the action of the majority on the said reports, was signed and filed by the minority. This protest appears on pages 78-81 inclusive of the minutes of the General Assembly for that year and on pages 45-48 inclusive of the said Ex. "B" to this bill. Subsequently at the same meeting of the General Assembly of the Cumberland Presbyterian Church the committee on fraternity and union was increased by the addition of other members, and it was further directed to ascertain and report at the next meeting of the General Assembly such other steps as might be deemed necessary to be taken for the completion of the proposed scheme of re-union and union. The action as to this matter is found on page 61 of the said Ex. "B." The action taken by the General Assembly in 1903 and 1904, with the joint report submitted and adopted in the latter year, appears in the printed minutes for those years, respectively, and is reproduced on pages 1-19 of Ex. "B."

The report of the enlarged committee was adopted by a majority of votes at the General Assembly of the Cumberland Presbyterian Church in session at Decatur, Illinois, on the 24th day of May, 1906, and over the protest of a large minority the Moderator declared the scheme of union and re-union to be in full force and effect. After the passage of a resolution to that end by the same majority, over the vote and protest of the same minority, the Moderator declared the General Assembly of the Cumberland Presbyterian Church adjourned sine die as a separate Assembly to meet in and as a part of the 119th General Assembly of the Presbyterian Church in the United States of America on the 3rd Thursday in May, 1907, at a place not named. The protest of the minority was made and filed before the roll call on adjournment and before the declaration thereof was made by the Moderator. The report and protest and action of the General Assembly appear on pages 64-80 inclusive of

the minutes of that Assembly, and are reproduced on pages 67-83 inclusive of Ex. "B" to this petition.

The said protest being disregarded from the start and the purpose of the majority to adjourn without day and without naming the place for another meeting being persisted in by them, the majority were informed on the floor of the Assembly before the adjournment actually took place that the minority would treat the adjournment as illegal and ineffectual and would continue the session of the General Assembly thereafter, and immediately upon the announcement of the adjournment, as aforesaid, and before the majority had actually dispersed, J. H. Fussell, a regular commissioner to the General Assembly, and one of the minority, announced in a loud voice in the hearing of the majority and the minority commissioners then in the Assembly Hall, that the business of the General Assembly would be resumed at once in the hall of the Grand Army of the Republic near by, the Church building in which the previous part of the session was held being refused for the purpose. The minority commissioners, being about 106 in number then repaired immediately to the Hall indicated and there elected the Rev. J. L. Hudgkins, Moderator, and the Rev. T. H. Padgett, Stated Clerk, and other officers to fill the places of those who had gone away. Having done this the attempted adjournment a short time before and the previous declaration that the scheme of re-union and union had been accomplished, were treated as ineffectual and rescinded because unauthorized and illegal, and then, after the unfinished business had been transacted the General Assembly adjourned in due form and as required by the law of the Church to meet again on the 3rd Thursday in May, 1907, at Dickson, Tennessee. The General Assembly of the Cumberland Presbyterian Church met accordingly at Dickson, Tennessee, on the 3rd Thursday in May, 1907, with 76 of its Presbyteries regularly represented, and after the transaction of its business in the accustomed way through a period of five days, then adjourned to meet again at Corsicana, Texas, on the 3rd Thursday in May, 1908. The General Assembly met accordingly at Corsicana, Texas, on the day named, with a larger per cent of the 114 Presbyteries of the Cumberland Presbyterian Church regularly represented, and after the transaction of its usual business through a period of several days adjourned to meet again on the 3rd Thursday in May, 1909, at Bentonville, Arkansas. The General Assembly met accordingly at Bentonville, with a still larger per cent of the 114 Presbyteries of the Cumberland Presbyterian Church represented, and after the transaction of its ordinary business in the usual way through a period of several days adjourned to meet again on the 3rd Thursday in May, 1910, at Dickson, Tennessee.

Plaintiffs suppose that no one will doubt for a moment that the General Assembly of the Cumberland Presbyterian Church will meet according to its last adjournment in the year 1910, the Centennial Year of the Church, and that it will go on and on and that the Cumberland Presbyterian Church will continue for years and years its useful mission as a separate and independent Christian association. The minutes of the General Assembly of the Cumberland Presbyterian Church for its afternoon session at Decatur,

Illinois, on the 24th day of May, 1906, and of its sessions of 1907, and 8 and 9, will be filed on or before the hearing of this cause as evidence. Those for 1906 and 1907 appear on pages 98-106 of Ex. "B" to this petition.

Plaintiffs are informed and believe and allege that since the aforesaid action of the majority at Decatur, Illinois, on the 24th day of May, 1906, the former Cumberland Presbyterians who approved that action, including the Defendants to this Petition, have assumed and asserted that the aforesaid steps on the part of the General Assembly and the Presbyteries of the Cumberland Presbyterian Church and similar steps in the main on the part of the General Assembly and Presbyteries of the Presbyterian Church in the United States of America in the year 1903 to 1906 inclusive, have effectuated a valid re-union and union between the two churches and completely merged the Cumberland Presbyterian Church with its ministry and membership and property into the Presbyterian Church in the United States of America. In consequence of which the Defendants herein have claimed and held the exclusive use and control and occupancy of the house of worship and manse belonging to the Cumberland Presbyterian Church at Marshall, Mo., such claim and holding having been made by them as members of the Presbyterian Church in the United States of America, as will hereinafter be more fully stated.

Plaintiffs deny **in toto** that assumption and assertion on the part of those favoring the said scheme of union and merger. They are advised and believe and charge that there was no constitutional power in the General Assembly and Presbyteries of the Cumberland Presbyterian Church to form and accomplish such a scheme, and that every step taken to that end, as aforesaid, by the General Assembly and Presbyteries of that Church was in violation of its constitution **ultra vires** and void. It is found in the printed book heretofore filed as Ex. "A" to this petition. The courts of the Church are named in regular gradation and their powers defined in the constitution. "These courts are denominated Church sessions, Presbyteries, Synods, and General Assembly," (Sec. 24); "and the jurisdiction of these courts is limited by the express provisions of the constitution." Sec. 25. The powers of the Presbytery are enumerated in Sec. 31, of the constitution, and those of the General Assembly, which is the highest court of the Church, are enumerated in Sec. 43. The powers of the General Assembly are greater and more comprehensive than those of the Presbyteries and other courts of the Church, being as follows: "The General Assembly shall have power to receive and decide all appeals, references, and complaints regularly brought before it from the inferior courts; to bear testimony against error in doctrine and immorality in practice, injuriously affecting the church; to decide all controversies respecting doctrine and discipline, to give its advice and instructions in conformity with the government of the Church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior courts observe the Government of the Church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide or dissolve Synods; to in-

stitute and superintend the agencies necessary in the general work of the Church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of the church; to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of those courts and lying within their geographical bounds respectively; to superintend the affairs of the whole church; to correspond with other churches; and, in general, to recommend measures for the promotion of charity, truth, and holiness, throughout all churches under its care." Sec. 43.

Plaintiffs are advised and believe and charge that this enumeration, full and elaborate as it is, does not include power to form and accomplish such a scheme as that contemplated by the joint report in question. It does not even authorize the General Assembly to make or entertain a proposition on such subject. Nor does Sec. 31, confer any such power on a Presbytery. The jurisdiction of the General Assembly and of the Presbyteries being limited by the constitution to the express provisions thereof, and those provisions not conferring the power in question, it must follow inevitably that the union and merger as aforesaid and all steps taken for the accomplishment thereof were without constitutional authority and therefore, as plaintiffs are advised and believe and charge, the same are illegal *ultra vires* and void.

Self destruction or self surrender was foreign to the thought and the language of the framers of the constitution. The possibility of such a catastrophe was not contemplated by them. No power to accomplish such a result was given and none can be inferred).

Plaintiffs are advised and believe and charge furthermore that the express restriction of the powers of the General Assembly and the Presbyteries by Sec. 25, of the constitution to certain specific subjects, is equivalent to a positive prohibition against the usurpation of any other powers, that the scheme contemplated a merger of the Cumberland Presbyterian Church with its ministry and membership and property into the Presbyterian Church in the United States of America, and an absorption of the former church by the latter in every sense and detail, that the Presbyterian Church in the United States of America could not and did not agree to the scheme as anything but a merger and absorption, and that before assenting thereto it was advised by legal counsel of its different boards that it could do anything else without jeopardizing its property and the property and funds of its different boards. The committee on the part of that church so reported to the General Assembly thereof in the year 1906 as will appear from pages 139-141 of the printed minutes for that year and from that part of the report reproduced on pages 89-91 of Ex. "B" to this bill. That such was the intent and meaning of the scheme likewise appears from the joint reports themselves, made in the years 1904 and 1906, hereinbefore referred to as embraced in Ex. "B."

Moreover Plaintiffs are advised and believe and charge, that if there had been the most ample constitutional power in the General Assembly and Presbyteries of the Cumberland Presbyterian Church

to form a union with and effectuate a merger into another church "whose organization is conformed to the doctrine and order of this Church" (Sec. 43) still the so-called union and merger asserted by the defendants and other unionists would be illegal and inoperative and void, because the Presbyterian Church in the United States of America is not conformed in its organization to the doctrine and order of the Cumberland Presbyterian Church. The two Churches were and are essentially different in both doctrine and order, and these differences alone, in and of themselves as complainants are advised and believe and charge present insuperable legal barriers to the consummation of the so-called union and merger.

The Presbyterian Church in the United States of America was and is Calvinistic in its doctrine. The Westminster Confession of Faith and Catechisms constitute the religious creed of that church. They were ratified and adopted by the Synod of New York and Philadelphia in 1788, the year before the General Assembly was formed; and, with slight charges mentioned on the title page and on page 4 of a book called "The Constitution of the Presbyterian Church in the U. S. A." published in 1906, they are still in use in that church. That book is herewith filed as Ex. "C", to this bill for all proper purposes, but not to be copied unless called for by the Defendants. On the other hand the Cumberland Presbyterian Church was and is in its doctrine conservative and on the middle ground between Calvinism and Arminianism, having for its creed the Confession of Faith adopted as before stated in 1883, and already made Ex. "A" to this petition.

The difference that led to the formation of the Cumberland Presbyterian Church still exists in the main as, will readily appear to the Court the following quotations made from said Exs. "C" and "A" respectively.

(Confession of Faith of the Presbyterian Church in the United States of America, Chapter III.

GOD'S ETERNAL DECREE.

III. By the Decree of God, for the manifestation of His Glory some men and Angels are predestinated unto everlasting life, and others fore-ordained unto everlasting death.

IV. These angels and men, thus predestinated and fore-ordained are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished.

V. Those of mankind are predestinated unto life, God, before the foundation of the world was laid according to his eternal and immutable purpose, and the secret Counsel and good pleasure of his will hath chosen in Christ, unto everlasting Glory out of his mere free grace and love and without any fore-sight of faith or good works, or perseverance in either of them, or, any other thing in the creature as conditions or causes moving him thereunto; and all to the praise of his glorious grace.

VI. As God hath appointed the elect unto Glory, so hath he by the eternal and most free purpose of his will foreordained all means thereunto. Wherefore they who are elected being fallen in

Adam, are redeemed by Christ, are effectually called unto faith in Christ by His Spirit working in due season, are justified, adopted, sanctified and kept by His power through faith unto salvation. Neither are any other redeemed by Christ effectually called, justified, adopted, sanctified and saved, but the elect only.

VII. The rest of mankind, God was pleased, according to the unsearchable Counsel of His own will whereby he extendeth or withholdeth mercy as he pleaseth, for the Glory of his Sovereign power over His creatures to pass by and to ordain them to dishonor and wrath for their sins, to the praise of His Glorious justice.

VIII. The doctrine of this high mystery of predestination is to be handled with special prudence and care, that men attending the will of God revealed in His word, and yielding obedience thereunto may, from the certainty of their effectual vocation, be assured of their eternal election. So shall this doctrine afford matter of praise, reverence, and admiration of God; and humility, diligence and abundant consolation, to all that sincerely obey the Gospel.

THE LARGER CATECHISM.

Q. 12. What are the Decrees of God? A. God's decrees are the wise, free and holy acts of the Counsel of His Holy will, whereby, from all eternity He hath for His own Glory unchangeably foreordained whatsoever comes to pass in time, especially concerning Angels and men.

Q. 13. What hadth God especially decreed concerning Angels and men? A. God by an eternal and immutable decree, out of his mere love for the praise of His glorious grace, to be manifested in due time, hath elected some angels to glory; and in Christ hath chosen some men to eternal life and the means thereof; and also, according to His sovereign power and the unsearchable counsel of His own will (whereby he extendedth or withholdeth favor as He pleaseth), hath passed by, and foreordained the rest to dishonor and wrath to be for their sins inflicted, to the praise of the glory of His justice.

THE SHORTER CATECHISM.

Q. 7. What are the Decrees of God? A. The decrees of God are, His eternal purpose, according to the counsel of His will, whereby for His Own Glory, he hath foreordained whatsoever comes to pass.

CONFESSION OF FAITH OF THE CUMBERLAND CHURCH. DECREES OF GOD.

8. God for the manifestation of the glory and goodness, by the most wise and Holy counsel of His own will freely and unchangeably ordained or determined what He Himself would do, what He would require of His intelligent creatures to do, and what would be the awards respectively, of the obedient and disobedient.

9. Though all Divine decrees may not be revealed to men yet it is certain that God has decreed nothing contrary to His revealed will or written word.

FREE WILL.

34. God, in creating man in His own likeness, endued him with intelligence, sensibility and will, which form the basis of moral character and render man capable of moral government.

35. The freedom of the will is a fact of human consciousness, and is the sole ground of human accountability. Man, in his state of innocence was both free and able to keep the Divine law, also to violate it. Without any constraint from either physical or moral causes he did violate it.

CATECHISM.

Q. 7. What are the Decrees of God? A. The decrees of God are His wise and holy purposes to do what shall be for His glory. Sin not being for His Glory, therefore He has not decreed it.

CONFESSION OF FAITH OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATES OF AMERICA.CHAPTER 10,
OF EFFECTUAL CALLING.

1. All those whom God hath predestinated unto life, and those only He is pleased, in His appointed and accented time, and effectually to call by His word and Spirit, out of that state of sin, and death in which they are by nature, to grace and salvation by Jesus Christ enlightening their minds spiritually and savingly, to understand the things of God: taking away their heart of stone, and giving unto them an heart of flesh; renewing their wills, and by His almighty power determining them to that which is good; and effectually drawing them to Jesus Christ, yet so as they come most freely being made willing by His grace.

11. This effectual call is God's free and special grace alone, not from anything at all fore-seen in man, who is altogether passive therein, until, being quickened and renewed by the Holy Spirit, he is thereby enabled to answer this call, and to embrace the grace offered and conveyed in it.

III. Elect infants, dying in infancy are regenerated and saved by Christ through the Spirit, who worketh when and where and how he pleaseth. So also are other elect persons, who are incapable of being outwardly called by the ministry of the word.

IV. Others not elected, although they may be called by the ministry of the Word, and may have some common operations of the Spirit, yet they never truly come to Christ, and therefore cannot be saved; much less can man not professing, the Christian religion be saved in any other way whatsoever, be they never so diligent, to frame their lives according to the light of nature and the law of that religion they do profess; and to assert and maintain they may, is very pernicious and to be detested.

THE LARGER CATECHISM.

Q. 67. What is effectual calling? A. Effectual calling is the work of God's almighty power and grace, whereby (out of His free and especial love to his elect, and from nothing in them moving thereunto) he doth in His accepted time invite and draw them to Jesus Christ by His word and Spirit; savingly enlightening their minds renewing and powerfully determining their wills, so as they (although in themselves dead in sin) are hereby made willing and able, freely to answer His call, and to accept and embrace the grace offered and conveyed therein.

Q. 68. Are the elect only effectually called? A. All the elect, and they only, are effectually called; although others may be and often are outwardly called by the ministry of the word, and have some common operations of the Spirit, who, for their wilful neglect and contempt of the grace offered to them being justly left in their unbelief, do never truly come to Jesus Christ.

THE SHORTER CATECHISM.

Q. 20 Did God leave all mankind to perish in the estate of sin and misery? A. God having out of His mere good pleasure from all eternity, elected some to everlasting life, did enter into a covenant of grace to deliver them out of the state of sin and misery and to bring them into an estate of salvation by a redeemer.

CONFESSION OF FAITH OF THE CUMBERLAND PRESBYTERIAN CHURCH.

DIVINE INFLUENCE.

38. God, the father, having set forth His Son, Jesus Christ, as a propitiation for the sins of the world, does most graciously vouchsafe a manifestation of the Holy Spirit with the same intent to every man.

REGENERATION.

51. Those who believe in the Lord Jesus Christ are regenerated or born from above, renewed in spirit and made new creatures in Christ.

54. All infants dying in infancy and all persons who have never had the faculty of reason are regenerated and saved.

CATECHISM.

22. Did God leave all mankind to perish in this estate? A. No, God, out of His mere good pleasure and love, did provide salvation for all mankind.

23. How did God provide salvation for all mankind? A. By giving his son, who became man, and so was and continues to be both God and man in one person, to be a propitiation for the sins of the world.)

Other quotations need not be made, though there are many others, parts of the two books in which there is irreconcilable conflict on the subjects of election, predestination and foreordination.

(In the year 1903, the Presbyterian Church in the United States of America made a "Declaratory Statement," in reference to chapter 3, and to sec. 3, of chap. 10 of its Confession of Faith, and added two new chapters to the book, thereby constituting what is called the "Revision of 1903," referred to in the joint report on union and re-union.

It is not believed, however, by these Plaintiffs that the said "Declaratory Statement" made any change or alteration in the original meaning of the objectionable parts of the Confession of Faith referred to therein, or that such statement and the added chapters together rendered that book any less Calvinistic, than it was in 1810, when the Cumberland Presbyterial Church was organized.

Indeed that statement does not purport to be more than a mere explanation, which could have been made as well and as consistently in 1810, as in 1903, the English Language in which the Westminster Confession of Faith was written being the same in both periods.

Besides it is logically impossible that it should have changed and altered the true meaning of the original book whose language remains unchanged and unaltered. Moreover only a few sections are referred to in that statement, while in fact the Calvinistic doctrine with its logical sequences, so objectionable to Cumberland Presbyterians and so carefully excluded by them from their Confession of Faith adopted in 1888, "pervaded the whole system of theology formulated in that book"—the Westminster Confession of Faith—as stated in the preface already quoted in this petition. Nor was the larger catechism or the shorter catechism though equally objectionable to Cumberland Presbyterians and equally antagonistic to their written Confession of Faith referred to or in any manner changed or altered by the "Declaratory Statement" or the added chapters. The original text of the Westminster Confession of Faith, as it existed in 1789 and in 1810 has been reproduced literally in the book of 1903 and 1906, as it appears from Ex. "C" to this petition, and the meaning thereof is in no degree affected or intended to be affected by any of the revisionary matter adopted in 1908.)

The General Assembly of the Presbyterian Church in the United States of America in 1901, instructed its committee on revision, then appointed, to prepare amendments to certain portions of its Confession of Faith, "Either by modification of the text or by Declaratory statement, but so far as possible by Declaratory statement, so as more clearly to express the mind of the Church, with additional statements concerning the love of God for all men, missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrine set forth in our confession and taught in the Holy Scriptures." In response to that instruction the committee reported and the Church afterwards adopted the Declaratory statement and the added chapters, being chapters 34 and 35 already referred to.

That no part of this revisionary matter was expected to impair, or to be allowed to impair, the existing system of doctrine prevailing in that Church, is shown not only of the resolution of appointment just quoted, but also by a resolution passed in the General Assembly of the Presbyterian Church in the United States of America in 1904 after the question of union and merger, now under consideration was raised. That resolution is as follows: "Resolved, 4. That the Assembly in connection with this whole subject of union with the Cumberland Presbyterian Church, place on record its judgment, that the revision of the Confession of Faith affected in 1903, has not impaired the integrity of the system of doctrine contained in the confession and taught in the Holy Scriptures, but was designed to remove misapprehension as to the proper interpretations thereof." That resolution appears on page 21 of the Ex. "B" of this petition.

(Plaintiff further charge that the polity of the two churches is not at all in harmony, on the very material and vital question of educational qualification for ordination to the Gospel Ministry. The standard fixed by the Presbyterian Church in the United States of America leaves no discretion to the Presbyteries on that subject, whereas that prescribed by the Cumberland Presbyterian Church leaves a large discretion in that matter to the Presbyteries. In this difference in policy, as plaintiffs believe and allege, which enabled the Cumberland Presbyterian Church to carry the Gospel to the poor in the country districts and in other places not reached and not to be reached by the other church.

Plaintiffs further allege and charge that the two churches are wholly adverse on the race question, especially in reference to the commingling of the white and black races in the Presbyteries and the Synods and General Assemblies.

Negroes are not admitted as members of any of these bodies of the Cumberland Presbyterian Church, but they are admitted in all of them by the Presbyterian Church in the United States of America, in its General Assembly upon equality with its white members and its Presbyteries and Synods with certain doubtful provisions for separation of the two races at the discretion of the General Assembly. Those provisions in reference to the separation of the two races in the Presbyteries and Synods of the latter Church were brought about by the first recommendation in the joint report on union and reunion made in 1904. The General report made by the Committee of the General Assembly of the Presbyterian Church in the United States of America, submitted in connection with the joint report it is said: "No effort was made by the Cumberland Presbyterian committee to secure any change as to the Church relations of the colored ministers and congregations now in connection with this General Assembly. It was understood that these relations were matters that belong to our church alone."

The committee in all negotiations stood firm upon the scriptural principles of the real unity of the household of faith and the equality of all its members.

It was also clear it understood by both committees that these principles were to control the Church in the future as well as in the past and that as the result, if Presbyteries were organized on race or National lines, they would be represented equally with all other

Presbyteries in the General Assembly. This equal representation of all Presbyteries in the Supreme Court will emphasize and preserve the unity of the Church, while allowing so long as needful in exceptional cases separate congregations, Presbyteries and Synods. "At the same session of the General Assembly and as one of the series of resolutions heretofore referred to, was passed the following:

"Resolved, 5. That in approving the overture looking to a change in the form of Government concerning the territorial bounds of Presbyteries and Synods, this Assembly affirms its complete freedom from prejudice against any race and from any desire or purpose to bring a separation from our Church, or from representation in the General Assembly of any class or race of Presbyterians; but, on the other hand our purpose is to bring together in one Church members of all races and all classes." That part of the General report just quoted on page 27 of Ex. "B" to this petition, and resolution 5 just quoted appears on page 21 of Ex. "B."

Plaintiffs verily believe and allege that the commingling of the races upon terms of equality in these Church Courts, without reserve and imperatively in the General Assembly and partially and conditionally in the Presbyteries and Synods, would inevitably result in disaster to both races, and greatly impede the cause of religion in those sections of the country at least where the Cumberland Presbyterian Church has heretofore maintained its organization and accomplished so much good.

So plaintiffs earnestly repeat the charge that the difference between the doctrines and polity of the Presbyterian Church in the United States of America and those of the Cumberland Presbyterian Church are so great and so material and so essential as to completely inhibit the proposed scheme of union and merger and to nullify absolutely all steps taken for the accomplishment of that end as aforesaid.

Plaintiffs are advised and believe and charge that the Confession of Faith and Government of the Cumberland Presbyterian Church are the same now as they were in 1883, as then embodied in Ex. "A" to this petition and that the efforts made for union and merger have been ineffectual and have not in any measure changed or abrogated any part of that book)

(It is of no avail to the defendants in this cause and other unionists that section 60 of that Constitution authorizes amendments to that instrument and to the Confession of Faith, because no amendment to either was in fact made or even proposed. The proposition attempted to be submitted by the General Assembly at Dallas in 1904, to the Presbyteries was not intended as an amendment to anything, as its language shows; and if it had been intended as an amendment to either or both of those documents, the attempt would have been abortive inevitably, for the reason that no definit and specific change as to either was proposed in the General Assembly and by it definitely and positively approved and submitted as an amendment. The joint report on the subject of union and merger was adopted by means of what is known as the Templeton Resolution, which also directed that a part of the basis of union therein recited be recommended to the Presbyteries for their approval or disapproval, provided the Moderator and Stated Clerk should thereafter re-

ceive official notification of the adoption of the joint report by the General Assembly of the Presbyterian Church in the United States of America. That resolution appears on pages 18-19 of Ex. "B" to this petition.

A part of the basis of union was the thing submitted to the Presbyteries as the joint report provided and required, and the language of the submission was prescribed in the report as follows. "Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the Doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice." The basis referred to in the question is provided in Section 2 of the plan of reunion and union embraced in the joint report on union, and does not include the surrender of the name and organization and "All the legal and corporate rights and powers" of the Cumberland Presbyterian Church as provided in Section 1, of that plan, as will appear readily from the reproduction thereof on page 15 of Ex. "B" to this petition as propounded to the Presbyteries is without any essential element of an amendment; that to have been effective as an amendment it should have recited the exact and entire language of the changes designed to be made in so many words, should have been unconditional and definite in all of its term, should have been proposed in the General Assembly as an amendment and so approved by that body, and as such by it recommended to the Presbyteries for their approval, and then should have been approved by a majority of the Presbyteries. The absence of any of these requisites as plaintiffs are advised and believe and charge, was and is sufficient to prevent the said action from becoming effective as an amendment; and yet all of them were wanting as will readily appear to the Court from what has been said herein and from an inspection of the record of that action above referred to and (shown on those pages of Ex. "B" already cited.)

(Plaintiffs are advised and believe and charge that the aforesaid action of the General Assembly at Fresno, California, in 1905, and at Decatur, Illinois, in 1906, gave no sancity or validity to the previous action of the General Assembly and Presbyteries as an amendment or change of the constitution and Confession of Faith of the Cumberland Presbyterian Church; and that what the General Assembly did at each of those places and previously in reference to the so-called union and merger was absolutely null and void because in conflict with the organic law of the Church. They are advised and believe and charge that the attempted adjournment without day and without naming the place for the next meeting by the majority at Decatur in 1906 as aforesaid was in direct violation of Section 41, of the Constitution of the Church; and that the minority who continued the session of the General Assembly at that place in the afternoon of May 24, 1906, as aforesaid, after that abortive attempt constituted the only legal representatives of the Cumberland Presbyterian Church in the body at that time; that said minority was composed of

more than 100 commissioners, of whom more than ten, in fact one-half of them were ministers, and that they constituted largely more than the necessary quorum under Section 42 of the constitution and consequently that the action taken by them as hereinbefore recited was legal and effective to perpetuate the General Assembly of the Cumberland Presbyterian Church and to protect it against the surrender and extinction intended and attempted by the majority. As already alleged the General Assembly of the Cumberland Presbyterian Church has held its regular annual sessions every year since that time, and is to meet again at Dickson, Tennessee, on the 3rd Thursday in May, 1910.

Plaintiffs are advised and believe that two members on the committee on the part of the Presbyterian Church in the United States of America dissented from the joint report on union, that a respectable minority voted against its adoption and that many of its members and ministers were from the first and are now unalterably opposed to the so-called union and merger for various reasons, among them that such an arrangement is calculated to produce inevitable discord in both of the Churches, thereby hindering and retarding their usefulness and the general growth of Christianity and that Cumberland Presbyterians who do not wish to go into the other church should not and cannot be coerced into doing so.)

(Of the entire membership of the Cumberland Presbyterian Church at large, as comprised at the meeting of the General Assembly in 1906, at least 125,000 or more than two-thirds as plaintiffs are informed and believe and allege are unalterably opposed to the so-called union and merger and firmly fixed in their purpose to do all legally within their power to perpetuate the life and usefulness of that Church, in whose history they have so much pride and whose doctrine alone they can conscientiously accept and promulgate.

Some of the residue, which is less than one-third of the whole membership, are neutral on the subject and many of those acquiescing in the so-called union and merger are doing so because misled by others into the belief that they are powerless to do otherwise and are bound to submit even against that conscientious conviction to the domination of the self-appointed and self-commended and self-praised leaders.

It is freely conceded that the defendants and other unionists had the right to abandon the Cumberland Presbyterian Church and go into the Presbyterian Church in the United States of America, if such was their choice. This they have done over the entreaties and to the great regret of these plaintiffs and others of their former religious associates. But it is denied that they have the right or power, by means of the so-called union and merger or otherwise to take over with them into that Church those plaintiffs and other persisting Cumberland Presbyterians with the houses of worship and other property of the Cumberland Presbyterian Church against their will and over their solemn protest, expressed on all suitable occasions and continuously, as it has been, from the beginning of the unfortunate union and merger agitation until the present time.)

Plaintiffs further allege, and say that the local Cumberland Presbyterian Church and congregation at Marshall, Missouri, was organized prior to the year 1880, and has continued its organization as such

from that time to the present; that on the said 3rd day of July, 1888, Thomas G. Ehrmann and wife, for the consideration of \$900.00 conveyed to Andrew Olson, S. T. Potter, G. E. C. Sharp and R. Y. Althouse, Trustees of the Cumberland Presbyterian Church at Marshall, Mo., and their successors in office the following described property: A portion of lot Number 105, East Marshall, in the City of Marshall, Saline County, Missouri and described as follows: Commencing at the southwest corner of said lot Number 105, running East along Morgan Street 90 feet, thence North 90 feet, thence West 90 feet, to the place of beginning, being 90 feet square except 20 feet square in the northeast corner of the above described portion of said lot Number 105, as shown by deed herewith filed as Exhibit "1" and made a part of this petition but not to be copied unless called for by the defendants.

Plaintiffs further state and show to the court that on the 24th day of December, 1890, Thomas G. Ehrnman and wife for the consideration of \$15.00 conveyed to Andrew Olson, S. T. Potter, and G. E. C. Sharp, Trustees of the Cumberland Presbyterian Church at Marshall, Missouri, the following described real estate:

A part of lot number 105 of East Marshall, Missouri, described as follows: Five feet East and West by 30 feet North and South off the East side of 20 feet square heretofore reserved in the northeast corner of a tract or 90 feet square conveyed to said Trustees by a deed from said Thomas G. Ehrnman and wife dated July 3rd, 1889, and recorded in deed book 61 at page 669 in the Recorder's office for Saline County, as appears from the deed herewith filed as exhibit "2" and made a part of this petition but not to be copied unless called for by the Defendants.

Plaintiffs are advised and believe and charge that trusts for the use and benefit of the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, were created by said deed and that the said property could not and cannot lawfully be diverted to any other use.

The plaintiffs further allege and state that the said Andrew Olson, R. Y. Althouse and S. T. Potter, some of the Trustees mentioned in the said deed have long since departed this life and some of defendants, as plaintiffs understand, but whom they do not know, are wrongfully assuming to be their successors in said trust.

Plaintiffs show to the court that soon after the purchase of the said two lots of ground the said congregation erected on the former of them a handsome and substantial brick house of worship at a large cost for the use and benefit of the said local church and congregation; that the said property so improved was and is worth about \$30,000.00.

Plaintiffs show to the court that from the time of the purchase of the said lots and the erection of the said building the same were used by the local church and congregation of the Cumberland Presbyterian Church at Marshall, Mo., in accordance with the trust created by the deeds up to the 24th day of May, 1906, the date of the so-called union and merger before mentioned, after which time the Defendants illegally and wrongfully excluded the plaintiffs from the use and occupation, enjoyment and possession thereof, and wrongfully and illegally usurped for themselves as officers and members of

the Presbyterian Church in the United States of America the exclusive use, control, management and possession of the said property, and that the Defendants from that time to the present have so excluded the Plaintiffs from the said property and so usurped the same for themselves; that in so doing the Defendants have violated the trusts of the deeds and illegally and wrongfully diverted the trust property to uses for which it was not intended.

(Plaintiffs further allege that the membership, official and non-official of the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, comprised more than 200 active resident members on the 2nd day of May, 1906, and that about two-thirds of them thereafter adhered to the Cumberland Presbyterian Church, the rest of them then renouncing further allegiance to the Cumberland Presbyterian Church and declaring themselves by virtue of the so-called union and merger to have become members of the Presbyterian Church in the United States of America, and thereby to have become the exclusive, legal and beneficial owners of the said property; that those so renouncing the one allegiance and assuming the other are the Defendants in this case, and such as they are intended to represent, and these remaining in the Cumberland Presbyterian Church and in the congregation thereof at Marshall, Missouri, and refusing to go into the other Church including the Reverend J. E. Courtner, the pastor since called and now in charge of the Plaintiffs and such as they represent in this suit.

Plaintiffs are advised and believe and charge that the Defendants named and all other former members of the Cumberland Presbyterian Church at Marshall, Missouri, who have so denied further allegiance thereto and declared themselves to be members of the Presbyterian Church in the United States of America have thereby, in legal contemplation become seceders from the Cumberland Presbyterian Church and terminated and vacated their respective offices and places in the Cumberland Presbyterian Church at Marshall, Missouri, and in the Cumberland Presbyterian denomination and denied themselves of all trusts and powers and rights and privileges in the said Church and denomination, its affairs and property, business and worship, and that by operation of law the said trusts and powers and rights and privileges have become vested in these plaintiffs and those for whom they sue respectively, as the only persisting members of that Church and congregation; that notwithstanding all of this the Defendants still exclude the plaintiffs from the said property and usurp the same for themselves as members of the Presbyterian Church in the United States of America continuing to violate the trusts of the deeds and to divert the trust property.

Plaintiffs show to the Court that Edwin H. Merry and wife, on the second day of September, 1899, for the consideration of \$125.00 conveyed to George H. Althouse, W. E. Grube, Ed. (G. E. C.) Sharp and J. J. Kirkpatrick, Trustee of the Cumberland Presbyterian Church at Marshall, Missouri, a parcel of ground in Saline County, Missouri, described as follows:

Lot 7 and east $\frac{1}{2}$ of lot 8, in block number 33, in English's addition to the City of Marshall, as shown by deed herewith filed as exhibit number "3" of this petition and made a part hereof, but not to be copied unless called for by the Defendants; that the said lot of

ground with buildings thereon were purchased and used by the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, as a mission Church, the same being worth about \$600.00.

Plaintiffs further show that Louis A. Buck and wife, on the 8th day of October, 1903, for the consideration of \$4,000.00 conveyed to the Trustees of the Cumberland Presbyterian Church at Marshall, Missouri, and their successors in office the following described parcels of land, situated in the County of Saline in the State of Missouri that is to say 79 feet, off the north side of lot 8, in block 2, in Haggin's addition to the City of Marshall, the said grantors hereby reserve the right to use as a driveway, a strip of land ten feet wide running north and south across the land hereby conveyed, the west line of which driveway is parallel with and 148 feet east of the west line of said lot, and the grantors also hereby convey to the said Trustees the right to use as a driveway a strip of land ten feet wide, running north and south across lot 7, of said block 2, the west line of said driveway being parallel with and 148 feet East of the West line of said lot 7. It is understood that the title to the ten foot driveway across said lot 7, remains in the said grantors, the said grantees, their successors and assigns, merely to have the right to use the same as a passage way and the title to the said ten foot driveway across said part of the said lot 8, is in the grantees by this deed, the grantors theirs heirs, and assigns, merely reserving the right to use the same as a passage way, as appears from a deed herewith filed as Exhibit number "4" to this petition and made a part hereof but not to be copied unless called for by the Defendants.

Plaintiffs show to the court that this last named property was purchased and held and used by the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, as a manse or a home for the Pastor.

Plaintiffs are advised and believe and charge that trusts were created by the last two deeds as well as by the first two named in this petition for the use and benefit of the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, and that the said property could not be lawfully diverted to any other use; that notwithstanding these trusts the Defendants from and since the 24th day of May, 1906, have wrongfully and illegally excluded the Plaintiffs from any use, management, control, or possession of the said manse and mission Church house, and have usurped for themselves as members of the Presbyterian Church in the United States of America, the use and control, management and possession thereof, thereby violating the trusts created by said deeds and diverting the said property to other uses, as they did in the case of the house of Worship erected upon the lot first described in this petition.

Plaintiffs show to the court that ever since their illegal and wrongful exclusion from their said property, and the wrongful and illegal usurpation thereof by the Defendants as aforesaid, the Plaintiffs have been without any place of worship and have been forced at great expense and inconvenience to worship in a rented hall where they are now located, and they have also in the same manner been deprived of their home for their pastor.

(Plaintiffs now show to the Court that the Supreme Court of the State of Missouri, on the 8th day of June, 1909, delivered an

opinion in which it adjudged the aforesaid so called union and merger to be unconstitutional, ultra vires and void for the various reasons stated in the opinion and the reason heretofore alleged in this petition.

That opinion was delivered in the case of Charles A. Boyles et al., v. J. L. Roberts et al., on appeal from the Cooper County Circuit Court, the property involved in that case being the local Church house located in the town of Warrensburg, Missouri, and conveyed to Trustees of the Cumberland Presbyterian Church at Warrensburg Missouri, the deeds in that case being the same in legal effect as the deeds exhibited with this petition. The issues presented in that case were identical with those presented in this petition. The suit in that cause was brought by those members of the Warrensburg congregation who like the Defendants to this petition had denied for their allegiance to the Cumberland Presbyterian Church and become members of the Presbyterian Church in the United States of America by virtue of the so-called union and merger. At the conclusion of the opinion of the Supreme Court in that case the following language was used:

"This union is an unwarranted merger of the Cumberland Presbyterian Church into the Presbyterian Church, U. S. A. It is an unwarranted surrender of name, Confession of Faith, judicatories and an unconditional merging of the one church into the other. We say unconditional surrender and merger, because one party kept name, creed, government and everything, while the other abandoned everything. Such mergers have been condemned by the best considered cases both in this Country and England.

In England the attempted union and merger of the Free Church of Scotland, and the United Presbyterian Church was condemned by the House of Lords, Appeal Cases, 1904, P. 695.

Such a union is likewise condemned by one of the strongest Chancery Courts in this Country, that of New Jersey, Associated Reform Church v. Trustees of Theological Seminary, 4 N. J. Ch. P. 77.

You cannot by union or merger put one Church into another having a different creed and doctrines, without forfeiting the property held in trust, to such members of the body as remain faithful to the original creed and doctrine.

By the deeds, the property in this case is held by F. M. Cockrell, J. L. Roberts and W. K. Morrow, as "Trustees of the Cumberland Presbyterian Church of the Warrensburg Congregation." In one deed and in the others as "Trustees of the Cumberland Presbyterian Church" in Warrensburg, Missouri." This attempted union being invalid, and the plaintiffs herein having dissented from the Cumberland faith and cast their lot with another Church of a different Faith and Creed, they are not entitled to the beneficial use of this property but the beneficial use thereof belongs to defendants and all other members of the congregation of the Cumberland Presbyterian Church of Warrensburg, Missouri, who has remained faithful to the doctrines of that Church.

The universal rule is that where there is a schism, in a church, those remaining faithful to the tenents of the Church at the time of

the dispute, whether they be in the majority or the minority, are entitled to hold the property.

The respondents in that cause entered a motion to rehear and that motion was overruled on the 23rd day of October, 1909, the Court adhering to its former opinion and the Chief Justice delivering an additional opinion, overruling the motion to rehear.

Plaintiffs show to the Court that notwithstanding the opinion of the Supreme Court adjudging as aforesaid that the so-called union and merger was unconstitutional, ultra vires, and void, and that all former members of the Cumberland Presbyterian Church who, like the Defendants had denied further allegiance to the Cumberland Presbyterian Church and gone into the Presbyterian Church of the United States of America, have lost and abandoned all of their interests and rights in property conveyed to Trustees for a local congregation of the Cumberland Presbyterian Church, as was all of the property described in the deeds exhibited to this petition, and notwithstanding the demand of these plaintiffs upon the Defendants since the delivery of that opinion and the overruling of the motion to rehear, the Defendants still refuse to surrender the property described therein, or any part thereof to these plaintiffs, but persist in the wrongful and illegal usurpation, of the exclusive use, control, management, and possession thereof, still wrongfully and illegally excluding the plaintiffs therefrom, thereby continuing to violate the trust of the said deeds and to divert the said property.)

Plaintiffs state that the property hereinbefore mentioned is trust property, given in trust for the use and benefit of the membership of the said Cumberland Presbyterian Church at Marshall, Missouri, and is Church property; and that Plaintiffs have been deprived of the use and benefit of said property, and that the injuries sustained are continuous and plaintiff's damages are irreparable and plaintiffs have no adequate remedy at law.

Plaintiffs are advised and believe and charge that they are entitled to come into this Honorable Court for the redress of the aforesaid wrongs against them and their property, and for an injunction to restrain the Defendants from further violating the trusts of the said deeds and from further diverting the trust property to the uses of another Church whose doctrines are in conflict with those of the Cumberland Presbyterian Church, from further usurpation of the control, possession and management of the said property, and excluding the plaintiffs therefrom, and that they are also entitled to an injunction by which they may be restored speedily to the rightful use and possession, control and management of their said Church, and that the Defendants be restrained from interfering with them therein until a final hearing of this cause at which time the injunction may be made perpetual.

Wherefore the premises considered the plaintiffs pray that proper process be issued and served to the end that the defendants be compelled to appear and answer this petition but not on oath, that being waived; that on final hearing the Court adjudge the so-called union and merger to be unconstitutional, ultra vires and void; that the plaintiffs are the exclusive, legal and equitable owners of all the said remaining members of the Cumberland Presbyterian Church at Marshall, Missouri; that trusts were created

for the use and benefit of the local congregation of the Cumberland Presbyterian Church at Marshall, Missouri, by the said deeds and that the same be enforced and protected by a decree of the Court.

That in the meantime a writ of injunction issue and be served on the Defendants to the end that they be restrained and prohibited from longer violating the said trusts and diverting the said property, from further usurping the uses, and control and management thereof and excluding the plaintiffs therefrom; and also to the end that the Defendants may be at once removed from the said property and the plaintiffs placed in the full possession thereof, and that on final hearing the injunction be made perpetual.

Plaintiffs pray for such other, further, special and general relief as they may be entitled to in a Court of equity and good conscience under the facts of their case.

31. The defendants offer in evidence the amended answer of defendants in said cause of Hugh Hayes et al., v. David F. Manning et al., from said printed abstract of record last above mentioned, beginning with heading "Amended Answer" on page 27 of said abstract and continueing down to and including the 7th line on page 53 of said record, as follows.

Amended Answer.

(Caption omitted.)

Now come the defendants above named, who were duly served in this cause and admit that they are the trustees and elders, deacons and members, of Odell Avenue Presbyterian Church in the City of Marshall, Misosuri which said church was heretofore known as "Marshall Church or Congregation of New Lebanon Presbytery of Missouri Synod of the Cumberland Presbyterian Church" and that since the day of May, 1905, and up to the 18th day of June, 1907, has been known as the "Marshall Church of New Lebanon Presbytery of Missouri, Synod of the Presbyterian Church in the United States of America."

That as to the organization of the plaintiffs, and as to the respective relations, official and otherwise, of the said plaintiffs respectively to the alleged Cumberland Presbyterian Church of Marshall, those defendants have not sufficient knowledge or information to form belief, and deny the averments of the said petition in regard thereto, and require strict proof thereof; but they further aver that from the said day of May, 1905, up to and until the day of June, 1907, said plaintiffs and each of them, were numbers and communicants of the said Odell Avenue Presbyterian Church in the United States of America, and that the said plaintiffs remained members of said Church, taking part in its worship and proceedings. It in fact they ever have ceased to be such members and communicants, which is especially denied, it was by leaving said church and forming the new organization alleged in their said petition. And it especially denies that the said plaintiffs and the alleged organization which they represent, are in any way or manner a continuation, or the legal successor of the said Marshall congregation of New Lebanon Pres-

bytery of Missouri Synod of the Cumberland Presbyterian Church; and these defendants further say that they, and the organization they represent, to-wit, the said Odell Avenue Presbyterian Church in the United States of America, is the only legal successor and continuation of the said Cumberland Presbyterian Church; and these defendants further especially deny that they, or the congregation they represent, or anybody or person belonging to or in any wise connected with said organization, in any manner or at any time, forbid the plaintiffs, or their associates from worshipping in the church-house of the said Odell Avenue Presbyterian Church, or that they have ever excluded them from the use of such church, or from the rights, privileges and immunities of said Church-house, or any other rights, privileges or immunities of any kind or character, or otherwise, belonging to them as members of the said Odell Avenue Presbyterian Church.

And the defendants deny each and every other allegation in said petition contained. And this for their first defense.

II.

These defendants say, by way of further defense, that the Cumberland Presbyterian Church, mentioned in the petition, as organized on the fourth day of February, 1810, was organized by three ministers of the Presbyterian Church in the United States of America at that time, who were ordained of the Presbyterian Church in the United States of America at the time, and had been for years prior thereto, and that they, as such three ministers, organized what they called a Presbytery which was an independent Presbytery until 1814, when it was divided up and organized into a Synod; that said ministers organized said independent Presbytery for the temporary purpose, and with the expressed hope, intent and expectation that they would in a short time be able to effect a reunion with the mother Presbyterian Church, and that from said February 4th, 1810, they continued from time to time to make overtures of reunion with the said mother church, and that those matters continued and were the expectation and expressed hope of the bodies up to 1829, when said Synod organized the General Assembly of the Cumberland Presbyterian Church; that from time to time after the organization of said General Assembly, as the chief head and overseer of the Church, did, with the approval and authority of its several Synods and Presbyteries, make overtures for union with the other Presbyterian Churches of the land, and that as late as 1860 the said General Assembly, by resolution, expressly declared that they cherished the fond hope that the day was not far distant when the entire (Presbyterian) family should be represented in one General Assembly.

That afterwards overtures were made, and efforts instituted looking to union with each of the great wings of the Presbyterian Church in this country, and even with other Christian denominations and that during all the years, from 1810 to 1884, there never was any dissent entered of record, or made, to such desire and action of the church or against the right of the Assembly and the church to effect such unions with other Christian denominations, especially Presby-

terians; that the fathers of the Cumberland Presbyterian Church, their sons and successors, have always held and felt that it was a disgrace and scandal to the Church of Christ that it was divided into so many creeds and schisms—and especially in regard to Presbyterians.

That following the said expressed hope, intention and purpose of the church and also such express interpretation of constitutional power of the church and the precedents of its courts, through the years, the General Assembly of said Cumberland Presbyterian Church, in session at Nashville, Tennessee, in 1903, raised a committee and denominated it the "Committee on Fraternity and Union" and directed them to meet and confer with similar committees from other denominations, and especially Presbyterian denominations on the question of fraternity and organic union.

That the General Assembly of the Presbyterian Church in the United States of America, in session at Los Angeles, California, in said year of 1903, likewise appointed a committee, called the "Committee on co-operation and Church Union," and suggested correspondence between the Cumberland Committee and the Presbyterian Committee, which resulted in meetings and conferences, and the Joint Committee matured the Plan of union and reunion of the two churches, and the Cumberland Committee, following the usages in such behalf observed in its said Church, did, in February, 1904, publish said plan in the church papers, and it found its way into the secular papers of the country, and the same was reported, together with the Report of the Joint Committee, to the General Assembly, of the said Cumberland Church at Dallas, Texas, in May, 1904; that said report was unanimous so far as the Cumberland Committee was concerned.

That the Presbyterian Committee likewise reported the said joint report and plan of union to the Presbyterian Assembly, then in said May, 1904, in session in the City of Buffalo, New York; there being a dissent from said report and Plan of Union by certain members of said committee.

That such action was had in said Cumberland General Assembly that said Joint report was adopted and the Plan of Union was recommended to the Presbyteries for their action as required by the Constitution of said Cumberland Church, and the Moderator and Stated Clerk of the Assembly was ordered to send said overture down in regular course as soon as official notice of like action was had thereon by the Presbyterian Assembly.

That the said Presbyterian Assembly overruled said dissent and adopted the majority report on said Plan of Union and ordered the said joint plan of union submitted to the said Presbyteries of the said Church; that in said Presbyterian Assembly there were protests filed which resulted in a retrial of the matters raised in protest against said action of the Assembly, and said protest was overruled and the answer thereto spread upon the Minutes of the said Assembly. And by said Plan of Union and the action of the said Assemblies the said plan was to be submitted to the Presbyteries of each of said Churches meeting in the Fall of 1904 or the Spring of 1905, and such Presbyteries were to certify such action to their respective Assemblies on or before April, 1905; that such proceedings were had in the said Assemblies of each of said Churches. That at the

meeting of the General Assembly of the Cumberland Presbyterian Church at Fresno, California in May, 1905, from the returns of the said Presbyteries, as canvassed by a committee duly appointed and whose report was returned to said Assembly and fully discussed by it and was by said Assembly regularly and legally adopted, it was found that said Plan of Union had been approved and adopted by a majority of the Presbyteries of said Cumberland Presbyterian Church and that said action and plan of Union then and there became effective and binding upon all persons who were then members, officers, ministers and agents of said Cumberland Presbyterian Church by the terms of the contract of union itself, as well as by the Constitution, usage and customs of the said Church.

That at the said Fresno, California, Assembly, after the action of the Assembly adopting the report of the said canvassing committee declaring that said Plan of Union had been adopted by a majority of the Presbyteries, certain members of said Assembly, headed by one J. J. McClelland, presented to said Assembly a protest against the action of the said Assembly and the Presbyteries in adopting said Plan of Union, in which protest they assailed the constitutional right of the Assembly and the Presbyteries to effect said union, and also questioned and denied the similarity and identity of the doctrine, polity and usages of the two churches; that said protest was then and there by said Assembly fully heard, considered and spread upon the records, and was by a committee of said Assembly answered, and the report of said answering committee denied all, of the alleged objections contained in said protest, including the right of the church and the Presbyteries to adopt the said Plan of Union, also the question raised and insisted upon in said protest of the identity of the doctrine and polity of said Churches; and the Assembly then and there adjudicated that said answer of the said committee was in itself correct and right, and that the said action of the Assembly and of the Presbyteries in adopting said Plan of Union was constitutional and within the powers of the Assembly and the Presbyteries, and that the identity of doctrine and polity of the said respective churches was sufficient to and did warrant the said union, and that there was no difference of doctrine or polity; and so defendants say that the said action of the said Presbyteries, as declared by the said Fresno Assembly, became and was the law of the said Cumberland Presbyterian Church and as such is binding upon each and every one of its ministers, members, officers, agents and agencies.

That at the said Fresno Assembly the plaintiffs in this case were regularly represented through the representation from the said Presbytery of New Lebanon, and that the opponents of the measure, nor any of them, in any official manner whatever, made or attempted to make or register in the proceedings of said Assembly, any purpose to disregard said action of said Assembly and Presbyteries and to disobey and hold it for naught; but they submitted their ideas, views and best reasons on that question to the said Assembly, which were then and there by said Assembly considered and settled against them, as they then and there well knew. And the protestants then and there by said protest implicitly bound themselves and their associates to abide by and submit to the action of the said Assembly.

That the said Presbyterian Church in the United States of America at its Assembly at Winona Lake, in the State of Indiana in 1905, canvassed the returns from the several Presbyteries of the said church, by a committee, appointed for that purpose, declared that said Plan of Union had been adopted and approved by more than the two-thirds (2-3) required vote of the Presbyteries of that Church; that said respective assemblies were officially informed, each of the action of the other, on the said overtures and thereupon the said Assemblies continued their Committees on Union, instructing them to confer with each other and the various boards, committees, organizations and institutions of their respective churches, with reference to adjusting the details of union so accomplished between the said churches; that there was not even a dissent or protest filed in the Cumberland Presbyterian Church Assembly against the said action of the said Assembly in continuing the said Committee with said instructions.

That said Committees reported to their respective Assemblies of 1906, the Presbyterian Church in the United States of America Assembly being held at Des Moines in the State of Iowa, and the Cumberland Presbyterian Church Assembly in the City of Decatur, in the State of Illinois, and that at said Assemblies the reports of the said committee were considered, and after due and proper deliberation on the part of said Assemblies the details were arranged, among which was a proviso that the Cumberland Assembly adjourn sine die to meet with and as a part of the one hundred and nineteenth General Assembly of the Presbyterian Church in the United States of America.

That the plaintiffs in this action were represented in said Decatur, Illinois, Assembly by the commissioners of New Lebanon Presbytery of the Synod of Missouri of the said Presbyterian Church, and that they are bound by the action and in all good conscience and equity are required to accept, submit to and obey the action of said Assembly.

That upon the action of the said Assembly, adopting the report of said committees on Fraternity and Union, certain members of said Assembly, headed by one Joe H. Fussell, presented to said Assembly a protest calling in question, directly, the power of the Assembly to declare said Cumberland Presbyterian Church, as a separate organization to be at an end, and questioning its power and right to declare the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and its other doctrinal and ecclesiastical standards, as the standard adopted by the Cumberland Presbyterian Church, and questioning emphatically the identity of such systems of doctrine, and further averring that such Assembly had no power to transfer its ministers, elders, officers particular church boards and committees to any other denomination of Christians and make them amenable to any other church constitutions; and further averring that the Assembly had no power to direct the Presbyteries of the Cumberland Presbyterian Church to send representatives to the General Assembly of the Presbyterian Church in the United States of America, meaning thereby the United Church.

That said protest so made was received by the Assembly and spread upon its records, and a committee was appointed to answer the same, which said committee presented a report to said Assembly in which the said committee found that the protest was couched in respectful language; that nothing therein contained would indicate that the signers thereof did not intend to submit to and abide by in all respects, the action of the said Assembly; said committee recommended that said protest be admitted to record. Said report then further proceeds to meet each and every one of the objections then and there raised by the said protestants and found and declared that said Assembly did not adjourn sine die, but merely as a separate assembly, thereafter to meet with the assembly of the re-unite church.

And further reviewing separately each and every one of the objections urged in said protest, and finding that they and each of them had been considered by the General Assembly at Dallas, Fresno, and by this Assembly, and that several Assemblies had acted on the several points of said union matters, after a full, free and unlimited discussion of the question under consideration; that report was fully considered by said Assembly and after due deliberation was approved and adopted, and thereby said Assembly adjudicated and decided that the matters and things in said protest contained were not well taken, and that the action of the Assembly at Dallas and at Fresno and Decatur, and the action of the Presbyteries on the said Plan of Union was fully in accordance with the constitutions, rules of order and proceedings of said Cumberland Presbyterian Church, and that they were, therefore, binding upon all the ministers, elders, deacons, officers and agents, particular church judicatories, boards and committees of the said Cumberland Presbyterian Church, and that said action had transferred said ministers, elders, deacons, officers and agents, particular church judicatories, boards and committees to the reunited church. And thereupon said Assembly did adjourn and met with the reunited church in accordance with the report of the said joint committees, and the action of the said respective churches through their several Presbyteries and General Assemblies. And so these defendants say that these plaintiffs and their associates, are now estopped to now question the validity of the action of the said Assemblies and Presbyteries in the matter of said union, and are in all equity and good conscience compelled and should be required to recognize and obey the said action of the said Assembly and Presbyteries in adopting said Plan of Union and carrying it out, and that it is wholly inequitable, unjust and contrary to good conscience that the said plaintiffs, through their said representatives should submit the validity, binding force and effect of the said action of the said Assembly, upon said Plan of Union, to the decision of the said Assembly and then refuse to be bound thereby and to recognize the same. And this for a second defense.

III.

And for another and further defense herein, these defendants say that the plaintiffs and defendants and their respective associates had a right to submit the aforesaid questions, mentioned in the second defense, to the said General Assemblies, together with the whole Plan of Union, and that this contract between the plaintiffs and de-

fendants ought and should be in equity and good conscience binding upon each and every one of them; otherwise, these defendants say that they and their associates would be robbed of their right to contract with the plaintiffs and their associates, and defendants further say that there is nothing in the Constitution of the Presbyterian Church in the United States of America, nor of the Cumberland Presbyterian Church, that deprives those churches, and each of them, of their right to contract with one another on the subject of organic union, and that to deprive the said defendants and their associates of said right to contract and to deprive the said Cumberland Presbyterian Church of its right so to contract, would be a violation of the Fourth Article of the Bill of Rights of the State of Missouri, which guarantees to each one of these defendants the right to contract and to enjoy the fruits of his contract, and that it deprives these defendants and their associates and the Cumberland Presbyterian Church of the right inherent in them and it to have equal protection of the law, and the same rights extended to them as to all other citizens of the United States and is and would be a violation of the Fifth and Fourteenth Amendments to the Constitution of the United States. And this for a third defense.

IV.

For another and further defense herein, these defendants say that the representatives of these plaintiffs, together with other persons who were opposing the action of the General Assembly and Presbyteries in forming the union, did, at Decatur, in the County of Macon, State of Illinois, on or about the . . . day of May, 1906, institute in the Circuit Court of the State of Illinois, a Court of Common Law and Equity Jurisdiction in and for said County and State of Illinois, a suit and action in equity wherein one Joseph H. Fussell et al., too numerous here to mention, were plaintiffs and complainants, and one J. B. Hail, the Moderator elected and acting of the General Assembly of the Cumberland Presbyterian Church then in session in said City of Decatur, Illinois, and one J. M. Hubbert, Stated Clerk of said Assembly, and all the other members of said General Assembly who were supposed and believed to be in favor of carrying out the details for the union entered into with the Presbyterian Church in the United States of America by the action of the General Assembly at Fresno, California in 1905, as defendants, by which said action the said Hail and the members of the said General Assembly were sought to be restrained and enjoined forever from carrying out said details of said union, on the ground as in said Bill of Complaint alleged that said action of said Assembly of said Cumberland Presbyterian Church and the Presbyteries thereof in adopting said Plan of Union were wholly without authority and in violation of the Constitution of the said Cumberland Presbyterian Church and that the Assembly had no right to undertake a consummation of such plan under the constitutional limitations of said Cumberland Presbyterian Church, and because of there being no identity or similarity of doctrine and polity between the said Cumberland Presbyterian Church and the Presbyterian Church in the United States of America and said bill undertook to show said Circuit Court that complainants were right in their

contention, and that said Assembly and its officers and members were wholly wrong, and that the said action of said Assembly, if in fact it carried out said details of union, would cast a cloud upon large properties owned by said Cumberland Presbyterian Church as well as upon the right of the particular churches and local congregations to their local property and churches and that said bill alleged, among other things, that the said plaintiffs brought said suit on behalf of themselves, individually, and as representatives and on behalf of all other persons and all other members, officers and committees of said Cumberland Presbyterian Church were opposed to said union, and they further claimed that in addition to want of authority, said proceedings were irregular and insufficient; that the said John B. Hail, the Moderator, and all and each of the other defendants appeared and demurred to said Bill of Complaint, putting in issue all the questions of law raised by the facts in said petition, and said Assembly stopped its proceedings and deliberations and waited for days while said matter was tried in said Circuit Court of Macon County, Illinois, before the Hon. W. C. Johns, Judge thereof, and that the said Court did, after due deliberation and hearing, dismiss said petition and adjudged and decreed and held that the said proceeding was proper and legal and that the Assembly and Presbyteries had not transgressed the bounds of their rights and powers in said matters, and thereby held that the said Cumberland Presbyterian General Assembly had the right to pass upon and decide this right under its constitution and to perfect said union according to said plan, and also had the right to pass upon and decide finally the question of the identity of the doctrine of the two churches; and thereupon the Assembly, as hereinbefore recited, under the authority and permission of said Circuit Court, proceeded to and did adopt the report of its said Committee on details of effecting the union, and the same was carried out as hereinbefore set forth and decribed in the second defense.

That the complaints in said action appealed from the decision of the said Circuit Court on the said demurrer and carried the case to the Court of Appeals of the Third District of the State of Illinois, which in due course considered said case and held and affirmed said judgment. Whereupon the plaintiffs is said proceeding again appealed said case to the Supreme Court of the State of Illinois where such proceedings were had that on the day of the said Supreme Court did affirm said judgment in all things.

So these defendants say that all the matters and things raised and set up in the plaintiff's Bill of Complaint in this case have been fully settled and adjudged between their representatives in the said suit of Fussell et al., v. Hail et al., and that the said judgment of the said Circuit Court aforesaid is entitled to full faith and credit in the State of Missouri, and that to deprive these defendants and their associates of the protection thus adjudged to them by the said court, in consummating said contract of union, would be in violation of their rights and deprive them of their rights under the Constitution of the United States, which guarantees that the judgments and judicial actions of the Courts of the respective States of the Union shall have full faith and credit in each of the other States of the Union,

which said judgment of the Circuit Court of Macon County, Illinois, is now, and here by these defendants pleaded and set up under the provision of the Constitution of the United States as a complete bar and defense of this action. This for the fourth defense.

V.

For another and further defense these defendants say that in the event it should be held and determined that the said Circuit Court of Macon County, Illinois, under the facts and circumstances hereinbefore mentioned and set forth, had and acquired no jurisdiction of the subject-matter of said action, and that said judgment is not enforceable at law by reason of the want of jurisdiction over the subject-matter, yet these defendants say that the parties plaintiff in said action, being members of said General Assembly and the representatives of these plaintiffs and their associates, in the said Cumberland Presbyterian Church, did voluntarily summons and call the defendants in said suit, to-wit, the General Assembly, into said Court before the W. C. Johns, as judge thereof, to try and settle then and there before the said court the questions then and there sought to be restrained, and that the defendants in said action, representing the defendants and their associates in this action, and being and representing every State where the said Cumberland Presbyterian Church then had adherents, did accept said summons and appear, and it was then and there by and between said parties in said action submitted to said court to determine all the matters and things put in issue in said case, and by so doing the said plaintiffs and the said defendants thereby agreed to be and become bound by the decision of the said court and its Superior Court having reviewing power over it; and that said General Assembly and the defendants in said suit, did, as plaintiffs herein, well then and there knew, submit to said action and litigation with a view purpose and understanding that the decision of the said court would bind the parties thereto and that in the event of the plaintiffs being defeated in their said action, it would become and be to the defendants therein and those they represented a complete warrant for them to proceed in the action therein sought to be restrained, and, said Court by virtue of the proceedings hereinbefore mentioned and referred to, having held and decided the issue made and sought to be contested in said proceedings, to-wit; that the defendants therein and the General Assembly and Presbyteries of the Cumberland Presbyterian Church had under their constitution and laws full and complete right to make and enter into said plan and contract of union with the said Presbyterian Church in the United States of America, the said General Assembly and those it represented, after the decision of the said judge, did then and there proceed in reliance thereon as a warrant for the legality of said proceeding, to consummate the said contract entered into at Fresno, California, and declared to be binding between the said churches, and did complete the said union according to said plan, and did then and there in reliance upon said judgment in said court, change their position and the position of all its adherents, as will more fully appear from the following paragraph taken from the answer hereinbefore men-

tioned as being approved by said Assembly to the protest presented by the said Joseph H. Fussell et al.

"Your committee, further calls attention to the fact that all these (meaning the constitutionality of the action, the similarity and identity of the doctrine, and the right and authority of the Assembly to enter into the said contract and plan of union) have been fully considered and passed upon by a civil court, chosen by the protestants themselves, and upon their own statement of the case, where, after full consideration the action of the General Assemblies and Presbyteries in this regard was approved and found to be in accord both with the law of the church and the civil law. The opinion of the Court, delivered by the Honorable W. C. Johns, has been brought to this Assembly, and has already been spread upon the Minutes of this session, to which reference is hereby made."

And these defendants say it would be inequitable and unjust to interfere with and disrupt the said finding and decision of said Court, which was the tribunal selected by the parties thereto to decide this question, and the defendants plead said action as an estopped against the plaintiffs herein, and that the question of the constitutionality and validity of the union then and there accomplished cannot now, in equity and good conscience, be questioned or litigated by the said plaintiffs and their associates. And this for a fifth defense.

VI.

For another and further defense these defendants say that the plan and contract of Union, so far as the Cumberland Presbyterian Church was concerned, was made and entered into in Dallas in the State of Texas in 1904 and in the State of California in 1905, at Fresno, and that said contract so made and entered into was executed, as to its details, by the General Assembly of said Cumberland Presbyterian Church in 1906 at Decatur, Illinois, and that said State and each of them have since said dates by the final judgment and decree of the highest courts in each of said states respectively, decided, held and adjudged that said contract was constitutionally entered into by the said General Assembly of the Cumberland Presbyterian Church which had full right and authority to make the same, and that same is valid and binding upon the said Cumberland Presbyterian Church, and the ministers, elders, deacons, officers, members, boards committees and agencies of the said Cumberland Presbyterian Church, as will further appear, reference being had to the case of Fussell v. Hail, Illinois Reports, Clark v. Brown, Texas Reports, and Presby. Committee v. Cumberland Presby. Committee, California Reports; and so these defendants say that it will be entirely inequitable, unjust and in violation of equity and good conscience, as well as the guarantee and protection of the said constitution of the State of Missouri, and the Federal Constitution as hereinbefore cited, for the Courts of the State of Missouri to hold and decide that said contract was not valid and not binding upon the said Cumberland Presbyterian Church, its ministers, elders, deacons, members, officers, committees and other agencies, and so this is pleaded for a sixth defense.

VII.

And for another and further defense, these defendants say that in February, 1810, when the Independent Presbytery was as hereinbefore stated, organized, that said action was simply a reorganization of the old Cumberland Presbytery of Kentucky Synod of the Presbyterian Church in the United States of America, which had theretofore been dissolved by said Synod and the membership thereof attached to the said Presbytery and that the said ministers who organized the said Presbytery were the members of the Presbyterian Church in good and regular standing; that said Cumberland Presbytery did adopt the Confession of Faith and other ecclesiastical standards of the Presbyterian Church in the United States of America, and that said Presbytery was simply an Independent Presbyterian Presbytery, both in its polity and theology, and they entered into Articles of Association, from which the following is an extract:

"We, Samuel M'Adow, Finis Ewing and Samuel King, regularly ordained ministers in the Presbyterian Church, against whom no charge, either of immortality or hearsay, has ever been exhibited before any of the church judicatures, having waited in vain for more than four years, in the meantime petitioning the General Assembly for a redress of grievances, and a restoration of our violated rights, have agreed and do hereby agree and determine, to constitute into a Presbytery, known by the name of the Cumberland Presbytery, on the following conditions:

"All candidates for the ministry who may hereafter be licensed by this Presbytery, and all the licentiates or probationers, who may hereafter be ordained by this Presbytery, shall be required, before such licensure and ordination, to receive and adopt the Confession and Discipline of the Presbyterian Church, except the idea of fatality which seems to be taught under the mysterious doctrine of predestination. It is to be understood, however, that such as can clearly receive the Confession without an exception shall not be required to make any. Moreover all licentiates, before they are set apart to the whole work of the ministry, or ordained, shall be required to undergo an examination on English Grammar, Geography, Astronomy, Natural and Moral Philosophy and Church History."

That the protest of the said Cumberland Presbytery and its adherents, was not against the Third Chapter of the said Westminster Confession of Faith but against the action of the Synod refusing to allow its ministers and licentiates at ordination to save exceptions on the question of the alleged doctrine of fatality, if such doctrine was taught by the said Third and Tenth Chapter of the said Confession, that is to say, it was simply a question of the liberty of the individual officer or minister, to interpret said Third Chapter and to except to any interpretation of it that taught fatality.

That said Presbytery continued under said Articles until 1814 when the Synod, as hereinbefore stated, was organized and when the said Synod adopted the said Confession of Faith and discipline modifying only the Third and Tenth Chapters of the said Confession of Faith, so far as in their belief to relieve them of the seeming teaching of fatality as intimated in the Articles of Agreement of

the Presbytery that said Synod lived under and promulgated the said Westminster Confession of Faith with such modification, also the Constitution of the Presbyterian Church in the United States of America, and that said Synod was simply an independent Presbyterian Synod, holding to and teaching Presbyterian symbols of doctrine and form of government, being to all intents and purposes a Presbyterian Calvinistic Church, the only difference between it and any other Presbyterian Church was merely a question of hyper-Calvanism, so-called, and the said Cumberland Synod merely attempted to, and did undertake, to relieve itself and its adherents from holding a doctrine which might be interpreted to mean a teaching of fatality.

That Synod continued its existence until 1829, when the General Assembly of the Cumberland Presbyterian Church was organized and the said Revised Westminster Confession was adopted and declared to be the creed and polity of the said General Assembly and the said Cumberland Presbyterian Church, and that the great object of the modification was simply to give liberty to the officer, elder, minister, or deacon who was being ordained, the right to hold to his individual belief as to the great and mysterious doctrine of predestination, about which the said modified, or revised Westminster Confession, adopted and promulgated in 1829, confessed its profound and reverent ignorance and depreciates any dogmatism on that very question.

That under said Constitution and Confession the said Cumberland Presbyterian Church from 1829 continued to hold itself out as a Calvinistic Church and was so regarded and held in the public mind and esteem, because since its doctrines are held to be strictly Calvinistic in the theological sense of that term as set over and compared with Arminian.

That in 1883 the said Cumberland Presbyterian Church Assembly, by proper Committees, had prepared and submitted to the Presbyteries of the said Church a revision of its said Confession of Faith, and the same was, by the action of the majority of the Presbyteries, adopted and the General Assembly in 1883 so declared and found. In the submission of the said amended Confession of Faith the older Confession adopted in 1814 and re-adopted in 1829, as aforesaid, was submitted and continued as a part of the creed and doctrine and ecclesiastical standard and symbols, which continued up to and at the time of the Union in plaintiff's petition complained of, and the minister and officer of said Church has the liberty, as it had at all times since 1883, to accept either or both of those Confessions of Faith if it suited them, or as may suit and agree with his views and opinions of right, and that the Cumberland Presbyterian Church from its inception to the time of said Union sought particularly and generally for the freedom of belief and liberty of opinion, and that the judicatories of the Church had no right to dictate to the individual officer or member on these great questions, referring at all times every such officer to the Scriptures as the only true and infallible rule of faith and practice, and that it is truth and in fact the only rule of faith and practice in the Presbyterian Church and in the interpretation of all its standards has been the Scriptures and not the Westminster Con-

fession of Faith, which said Confession of Faith was only a helper to interpret the said Scriptures.

That during all these said times, as hereinafter stated, the said Cumberland Presbyterian Church was recognized as a Presbyterian Church, teaching and enforcing the Presbyterian polity, usages and customs, and enforcing and promulgating from its pulpits and its judicatories the great doctrines of the Scriptures, popularly, as well as theologically known as Calvinistic, and that its hymnology used in all its congregations was the same as that used in all the great Presbyterians denominations of the world. That in 1884 the said Cumberland Presbyterian Church on its application from its General Assembly, was admitted into the Pan-Presbyterian Alliance of the World, and from that time up to the Union continued to be a member of said Alliance and was regularly represented in its councils and in its Executive Committee.

That its records fail to show any protest to the action of the General Assembly in joining said Alliance, and maintaining its membership and representation therein, and that said Alliance has held during all of said years said Cumberland Discipline, Constitution, usages, customs, agreed doctrine, and other ecclesiastical symbols and standards, were Calvinistic and not Armeinian, and so these defendants say that it is not true, as in plaintiff's bill alleged, that there is a dissimilarity, there is not an identity of doctrine between the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America as contained in the Revised Confession of 1903 of the said latter Church; but these defendants aver that there is an identity of doctrine and most respectfully submit and suggest that the interpretation of the Third and Tenth Chapters of the said Confession of Faith as maintained and held in the case of *Boyles v. Roberts*, quoted and cited in plaintiff's petition is improvident, in that the matters and facts here in this answer set forth and pleaded were not called to the attention of the Court in that case, and that these defendants and their associates are not held and bound by the said decision on said points and grounds. And this for the eighth defense.

XI

For another and further defense, these defendants say that in addition to the above actions and interpretations of the constitutional right and power of the Assembly of the said Cumberland Presbyterian Church, and of the construction by it of the doctrines of the two Churches, the said General Assembly at Decatur, Illinois, in 1906, adopted what is known as the Steele Resolution, in which it is clearly held, set forth and declared by the said General Assembly that in the "re-union and union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America on the doctrinal basis of the Presbyterian Confession of Faith, as revised in 1893, the Cumberland Presbyterian Church does not surrender anything integral in its own system of doctrine as stated in its own Confession of Faith, nor modify in any particular its allegiance to the Word of God as the only infallible rule of faith and practice; nor has the Presbyterian Church asked or

expected us to do so." That other parts of said resolution hold that the Union does not alienate the property then held by any particular congregation of the Cumberland Presbyterian Church, but that in the re-united church, such property shall continue to be held for the use and benefit of such congregation; and that this adjournment did not destroy and interrupt the historical continuity of the Assembly but continued its life, its history and its work in the re-united church.

And so the defendants say that said resolution became and was an interpretation of the contract and plan of union, and these defendants aver that the Steele Resolution and the Moffat Resolution, adopted by the Buffalo Assembly in May, 1904, showed the sense of the respective assemblies as to the identity of doctrine as it then existed in the respective churches, and that neither of said churches by the said Plan of Union yielded anything integral to, or that destroyed the harmony and symmetry of either one of the Confessions or the doctrine thereof.

That by the said Plan of Union, as formed by the Joint Committee of the said churches, it is declared as the belief of the said Committees that the Faith and polity of the two churches was substantially similar and that the plan proceeded upon that basis; that there was in truth and in fact a substantial identity between the doctrine and polity of the two churches, and that such agreement now exists between the system of doctrine contained in the confessions of Faith of the two churches as to warrant the Union, and it is especially provided and recognized "that liberty of belief exist by virtue of the provisions of the Declaratory Statement, which is a part of the Confession of Faith of the Presbyterian Church in the United States of America, and which states that the ordination vows of ministers, ruling elders and deacons, as set forth in the Form of Government, requires the reception and adoption of the Confession of Faith only as containing the system of doctrine taught in the Scriptures. This liberty is specially secured by the Declaratory Statement as to Chapter Three and Chapter Ten. It is recognized also that the doctrine contained in the Brief Statement of the Reform Faith (that is to say, the Calvinistic) adopted in 1902, by the General Assembly of the Presbyterian Church in the United States of America for a better understanding of our doctrinal beliefs reflects a doctrinal agreement favorable to Union."

And so these defendants say that whatever may have been the possible or probable interpretations of the respective Confessions of Faith prior to the adoption of the said Plan of Union, and whatever may have been the seeming conflicts in the interpretations of the Confessions theretofore, that the said General Assemblies and the said Churches, and each of them, had the full power to agree that said Confession of Faith, after the revision at least of 1903, did teach the same doctrine and that the polity, practice and usage of the two Churches were the same, and to agree that they should be the same, and to set up as marks and witnesses, as to the meaning and agreement of the same by reference to the Brief Statement and the other standards and symbols of the respective Churches, and that the said plan and contract of union clearly and

unequivocally binds the parties, and each of the parties, to that liberty of belief of the individual officers as to the interpretation of the said respective standards, which was at the organization of the Cumberland Presbyterian Church, and has ever since continued to be the great chief and moving incentive and motive for the said organization and continuance of the Church.

These defendants further aver that the said Westminster Confession of Faith has ever, always and still does teach and uphold the doctrine of the freedom of the will and in its pulpits and in its evangelistic efforts for years prior to the union has taught the doctrine of the freedom of the human will, or the responsibility of the individual man, and the necessity of every one accepting the offered mercy of Atonement, and in the Ninth Chapter of the said Confession of Faith it is expressly declared "God hath endued the will of man with that natural liberty, that it is neither forced nor, by any absolute necessity of nature, determined to good or evil." And however unable it, or others, may have been, or now are, to harmonize the said doctrine with the alleged mysterious doctrine of predestination, the fact remains that they were always held together, and these defendants aver that it was for the Church and not for the Civil Courts to harmonize said doctrines, and that the Church is the last authority on said harmonizing of doctrine, and that the one doctrine cannot be pushed by the Civil Courts so as to obliterate and destroy the other doctrine since that would be a direct interference with the freedom of religious belief and a violation of the Bill of Rights of the State of Missouri. And this for the ninth defense.

X.

For a further defense herein these defendants say that the said New Lebanon Presbytery, to which the Marshall congregation belonged, was under the care and supervision of the Missouri Synod of the Cumberland Presbyterian Church; that said Synod, in its session in October, 1903, at Dexter, Missouri, adopted the following resolution commending and recommending the careful consideration by its Presbyteries of the question of union as provided by the General Assembly at Nashville of that year.

That subsequently, in 1904, the Synod in session at Aurora, Missouri, had presented to it an appeal of complaint, Rev. J. B. Fly of Neosho Presbytery complaining of the action of said Presbytery. In disposing of said complaint of the said Fly, which said protest was received and entered upon the Minutes, a committee was appointed to answer the same, which said committee reported that the said protest was not well taken, in that the General Assembly did in fact and in truth send down its overtures, and that in so doing it must perforce have passed upon its constitutional right to do so, and that the said General Assembly had full power to do so, and that its decision was binding upon the Church and all of its judicatories, and the protest was not well taken and, therefore, was overruled; that the prosecution of said protest, as it might have been, was not continued any further, and that the said judgment of the said Synod, as to the validity of the act of said General Assembly in submitting said overture of union was thereby adjudged to be valid and binding, and that said

judgment and decision is unimpaired and unrevived and is in full force and was at the time of the union.

That the said Synod of Missouri in 1905, in its meeting at Odessa, adopted a resolution directing the trustees of Missouri Valley College to take such steps as they might be advised to be necessary and proper, together with all other proper measures, to secure the title of said College to its property and endowment to the united church, and looking after its freedom of action in and under the jurisdiction and control of the united church. That one L. F. Clemens, and certain others of said Synod, filed a protest against the action of said Synod in taking said action, questioning the power of the Synod to do so and assailing the plan and basis of union and the legal and logical effect thereof, and questioning the constitutional power of the Assembly and the church to effect a union, and characterizing the said effect as an action to remove the said College with its property from the church in which it was founded; that said protest was entered into the Minutes and a committee appointed to answer the same, which answer held said protest not well taken and affirmed the authority and power of the Assembly and the church to act in the premises, and commended the action of the General Assembly at Fresno, California, and held "that the ruling of the Assembly is the law of the matters presented in the protest now under consideration, and binds the protestants, as well as the other members of the Church," and holding that the union under the plan and action of the General Assemblies of the two churches operates to carry the College and its properties to the new church and all the rights and privileges it now enjoys and has; and said answer became and was the judgment of the Synod and it remains unappealed from and unreversed and in full force at all times since its adoption.

Said Synod at its said session passed upon other phases of the union question and disapproved of any action of complaint looking to a dissent from the action of the Presbyteries and the Assembly and enjoined on its Presbyteries and Churches to observe and obey the injunctions of the high courts; that among other acts on the said subject of union a preamble and resolution, appearing on the 53rd page of the printed minutes of said session, was adopted, by which it was resolved to be the sense of this Synod "that the good of the cause and the hopes of the Church will be subserved by the acquiescence of the whole church in these steps (meaning the steps taken to accomplish the union between the two churches as recited in the preamble to said resolution), and this decision of the legal authority of the denomination and we, therefore, recommend all the Presbyteries under our care to become subject to the deliverance of our highest court and submit to its decisions in a dignified and Christian manner." This minute was ordered sent to the several Presbyteries of Synod.

And these defendants aver that the minutes of said Session of the Synod of Missouri were, according to the usage and custom of the said Synod, printed and sent to each and every Church in the State of Missouri, including the Church at Marshall, and the action of said Synod was known to all the congregations that chose to be informed in regard thereto and especially these plaintiffs and their

associates, and these defendants aver that the plaintiffs and their associates were bound by said action, and that they took no means to repudiate the action, either of the General Assembly at Fresno, California, in 1905, nor of the Synod of Missouri in 1905, but that thereafter in the full knowledge of the same continued to co-operate and did co-operate with the said church at Marshall and its officers and members well knowing that the session of said Church and its pastor and members accepted and intended to obey and respect the action of the higher judicatories and were expecting these plaintiffs and their associates likewise to obey and respect the said judicatories and to come into the union, as it was well known to all persons interested that the said union was affected and would be carried into operation. And this for the tenth defense.

XI.

For another and further defense, these defendants say that New Lebanon Presbytery in session at Highland Church in Cooper County, Missouri, on September 29th, 1904, the Marshall congregation being fully represented at said meeting by the elder L. M. Morrow, did, on Thursday, the 27th, by formal resolution, answer the overture sent out by the General Assembly at Dallas, thereby voting for the adoption of said Plan of Union.

That afterwards, to-wit, at the Spring Session held at Pilot Grove Cooper County, Missouri, on April 18th and 19th, 1905, the said Presbytery of New Lebanon adopted the following resolution: "For the sake of the unity and peace of the Church we pledge ourselves, as the ministers and elders in New Lebanon Presbytery of the Cumberland Presbyterian Church, to submit to and abide by the action of the majority of the Presbyteries of our church on the subject of union with the Presbyterian Church in the United States of America." That while there were persons voting in the negative on said resolution, there was no protest, appeal or other method taken to reverse said action, and that the same since then and at the time of the union has been and is in full force and effect; that at said meeting of Presbytery the Marshall congregation was represented by its pastor and ruling elder, George H. Althouse.

That the Spring Session of New Lebanon Presbytery was held on March 13th and 14th, 1906, at Marshall, Missouri in the building in controversy in this suit, the meetings of which were attended very largely by both the plaintiffs and the defendants in this case; that among other proceedings in relation to the question of union had at said church, was the adoption of the preamble and resolution sent down in October, 1905, from the Synod of Missouri, as appears on page 7 of the printed minutes of said Spring Session of the said New Lebanon Presbytery.

That the Fall Session was held at Stony Point Church in Morgan County, Missouri, and at said meeting Rev. Percivance McCluny an ordained minister, asked that his name be dropped as he could not accept the union consummated between the two churches, and the Presbytery granted his request and dropped his name. That at the same session of Presbytery Rev. L. F. Clemens' name was dropped because of his alleged renunciation of the union.

These defendants state that according to the custom, practice and usage of the said New Lebanon Presbytery then in vogue, the minutes of each of the sessions above mentioned were printed and distributed among the various congregations, among them being the congregation at Marshall, Missouri, and that these plaintiffs and defendants alike had access to the said printed minutes, and knew from other sources of the action of said Presbytery and of the determination and intent of said Presbytery to accept said union and respect and observe the directions of the superior courts of the church, and that the said Presbytery was counselling its congregations, sessions and members to observe and respect the same.

These defendants further say that the pastor of the Marshall Church, Rev. J. M. Hubbert, was a member of the Decatur Assembly and he was the Stated Clerk of said Cumberland Presbyterian Assemblies and attended each and every Assembly and kept the minutes thereof, and that it was his custom, upon his return from each of said Assemblies, on a Sunday soon thereafter to give his congregation and church an outline of the important doings of said Assemblies, and that of the three Assemblies the great and controlling thing was the union question: that said Hubbert did announce the action of the Assemblies to his said congregation after the Fresno Assembly, likewise after the Decatur Assembly he announced the said union of the two churches was in effect and force and he advised and requested his people to acquiesce in the result since it was an accomplished fact and the plaintiffs, as well as the defendants, were cognizant of all these announcements of said proceedings.

That during all of said time the plaintiffs herein and especially after the Fresno Assembly, continued, as heretofore, to co-operate with the defendants and others of the said Marshall Church, and while they may not have agreed to all the things connected with the union, they still continued to attend the worship and such as were members attended the session, and such as were deacons discharged the duties of such office, and continued to without any complaint or intimation that they intended to renounce the action of said general Assembly and the Presbyteries, and that the only time and place in which any question of the kind was raised was in December, 1906, more than eighteen (18) months after the Fresno Assembly at which the contract and plan of union was adopted and means taken to execute and carry it into operation, and more than six (6) months after the Decatur Assembly had fully and completely carried the same into effect, at which said time there was a congregational meeting when there arose a difference as to the methods of electing certain elders and deacons. A resolution was offered that the meeting should be held as that of the Cumberland congregation and to so continue until the matters which were in litigation in several states should be settled in the courts; that the session and pastor continued to meet as usual and that numbers of the plaintiffs herein continued to occupy their places in the congregation as usual, and under appointment of the superintendent and church session, accepted positions as teachers and other officers in the Sunday Schools, and no question was ever raised by them as to the fact that they had renounced, or intended to renounce, the union, and intended to leave the Church on that ac-

count; but they continued leaving the defendants and their associates under the impression that while they were not favorable to the union it was not their intention to renounce the action of the Assembly and leave the church; but, on the contrary, led the defendants and their associates to believe that they would continue as before, though with reluctance; that many of these defendants and their associates believing in their said intention, continued with the church, and that the said plaintiffs while acting with the congregation and the old session, permitted the said session to receive into said congregation large numbers of new members who should thereby believe and think that they were interested in said church, and never at any time until the date hereinafter mentioned did they acknowledge to the session, or to the congregation, or to the persons who were joining the same, that they had made or intended to make any claim to the said property, or to the use or possession of said property; and, as a consequence these defendants and their associates, and those joining the said Church since, have been misled to their prejudice by the acts of the plaintiffs, and this will more fully appear by a claim or notice dated October 25, 1909, and addressed to one of the defendants to-wit, George H. Althouse, which was a claim, or notice, served, or attempting to be served, giving or attempting to give notice to these defendants and their associates, in which said notice it is recited and declared that "you have had entire, absolute and unmolested use of said church, our Mission Church and our Manse, aggregating in all something over twenty thousand dollars worth of property for nearly three years, while we, the original, loyal, steadfast Cumberland Presbyterians have been put to sore distress of mind, great physical inconvenience and have paid out much money in attempting to find a place in which we might humbly worship God, according to the dictates of our own conscience."

That said notice admits the unquestioned possession by the defendants for about three (3) years, whereas it is in fact for the time of about four and one-half (4½) years, or from May, 1905, to October 25, 1909.

These defendants say that said notice was given after the Courts of the State of Missouri had, in the Warrensburg case, decided the same for the anti-unionists and had overruled the motion for the rehearing in said case; and these defendants say that under all of these facts and circumstances, the conduct of the plaintiffs and their associates has been such that in equity and good conscience they are and ought to be estopped from making any claim to the premises in this suit, or question the validity of the action of the General Assembly in effecting the said union, or of the Synod of Missouri in declaring the same valid, constitutional and binding as well as like action on the part of the New Lebanon Presbytery, and especially that they have by their conduct adopted and led the defendants and their associates into action and permitted them to take into their church without notice or objection, new members who thereby believed that they had a right to the use and possession of the property in question in this action, and that now to disturb the use and possession of these defendants and their associates would be wholly unjust and against equity and good conscience, and should not and ought not to be permitted and allowed.

That plaintiffs cannot lie by for years and wait the outcome of litigation and permit these defendants and their associates and others that have since joined them on the faith of their right and title to the possession of the property and then commence this suit to litigate the original question of the validity of the union. And this for the eleventh defense.

XII.

For another and further defense these defendants say that, at the time of bringing this suit by plaintiffs herein there were other suits involving the same matters and legal questions but on different property in various counties of the State then being instituted or threatened to be instituted, involving some pieces of property in counties and producing a large number of suits and involving the same questions of fact and law with differences as to the immediate parties in interest and local facts connected with the pieces of property in question, and thus harassing, worrying and bothering each of the churches represented therein and costing a vast amount of time, labor and money, besides the distraction and strife connected with each separate and individual suit. That on the 8th day of December, 1909, with a view of preventing these numerous actions and suits with the consequent multiplied litigation, and to allay the excitement and harassment of each of the churches represented and involved, one James H. Barkley, a citizen of the State of Michigan, as Moderator of the General Assembly of the Presbyterian Church, U. S. A., and Chairman of the Executive Commission of said General Assembly, and William H. Roberts, a citizen of the State of Pennsylvania, Stated Clerk of said Assembly and Secretary of said Commission, individually and as such officers and as members of the Presbyterian Church, U. S. A., and on behalf of said Presbyterian Church and in the execution of their rights, duties and privileges as charged with the care, oversight and preservation of the peace of the several churches and the allaying of strife and unrest and uneasiness therein, did file in the office of the Clerk of the Circuit Court of the United States for the Western Division of the Western Judicial District of Missouri, their Bill of Peace against Hugh Hayes, G. E. C. Sharp and a large number of others, citizens of the State of Missouri, wherein they averred and set up that the said defendants in said bill mentioned and the Cumberland Presbyterian Church of which they claim to be members had and were instituting and were threatening to institute numerous suits against the members of said Presbyterian Church, U. S. A., to recover certain property mentioned and described in said bill and were thus multiplying litigation and harassing the churches and creating expense and interminable litigation, and that the plaintiffs therein had the right and it was their duty, as far as in them lay, to have said litigation confined within the least possible bounds and reduce its great expense.

In said bill the plaintiffs therein allege that the defendants who have brought and are threatening to bring said suits are relying upon the case of *Boyles v. Roberts*, 121 S. W. 805, now likewise reported in 222 Mo. 613, which said case is set up and relied upon by plaintiffs in this action in their petition.

But the said plaintiffs in their said bill of complaint in said U. S. Court set up that said case and other cases claimed to be of like nature and import in Missouri deprived the plaintiffs and their associates of their equal protection of the law and made and enforced a law abridging the privileges and immunities of the said plaintiffs and their associates and violates the Fourteenth Amendment to the Constitution of the United States.

That on said Bill subpoenas were issued and the defendants therein were served, including two of the plaintiffs herein, to-wit, Hugh Hayes and G. E. C. Sharp and the property in which said defendants herein claimed to be interested, is described in much the same terms as in plaintiff's petition herein. That said Bill of Peace is pending in said Circuit Court of the United States upon the Equity docket thereof as case number 3540. And this for a twelfth defense.

XIII.

And for another and further defense these defendants say that they are informed and believe that plaintiffs in this case are resting upon the law alleged to be contained in certain opinions of the Supreme Court of Missouri, and claim that:

(a) Under the law of Missouri as decided in October, 1909, by the Supreme Court in that State in the case of *Boyles v. Roberts*, 121 S. W. 805, the Court can, regardless of any decision by church authorities heretofore or hereafter made, determine whether the creed and doctrine of the merged church is the same as that of the former Cumberland Church, and if not then the property is, without more, forfeited to those who have refused to follow the merged church or abide by the merger.

(b) There was in fact such departure in creed and doctrine by those who followed the merged church, whereby all the property formerly owned by the Cumberland Church was forfeited to and became that of the plaintiffs and the class of persons represented by them.

Against such claims and in support thereof and as one of the grounds of their defense, these defendants invoke the protection of the Fourteenth Amendment to the Constitution of the United States, which prohibits the State from making or enforcing any law which abridges the privileges and immunities of defendant from taking, without due process of law, the property of the Presbyterian Church and from depriving complainants of the equal protection of the law. Under that amendment defendants and each person represented by them, have the right and privilege of membership in their church, to contract therefor with other members, to have the church creed and doctrine and membership determined by the church authorities and to have enforced the trust upon which the property is held so as to be applied to the use of those who complied with the church rules and regulations and the creed and doctrine as by the church authorities determined to exist. So defendants and those represented by them invoke the protection of that amendment against the forfeiture of their interest in the church property (held in trust for those following the creed and doctrine as from time to time declared fixed and changed by the church authorities) if and when a court may attempt

to decide that they follow a different creed and doctrine from that in existence when the property was acquired. They also invoke the aid and protection of that amendment in having accorded to them the equal protection of the law. The State Constitution gives to all persons freedom as to religious views, practice and beliefs. There is thus accorded to others said rights, but they are denied to defendants and those for whom they defend in that they are denied the privilege of following the creed and doctrine of their church as same may, in accordance with the contract of church membership, be from time to time amended, changed or promulgated, as determined by the proper church judicatories, but are required as a condition to membership to always confine themselves to the creed and doctrine which may be judicially determined by the civil courts to be the doctrine of such church. So under the law of Missouri any other voluntary association can have and maintain judicatories which are the sole and exclusive judges of membership and when the same is forfeited, which right is, if the claims of defendant be well founded, denied to other religious associations, for that the test of continued membership is made dependent upon a finding of the civil court of what is the creed and doctrine at the time adopted and followed by such church.

And these defendants say that plaintiffs ought not to have and maintain this action because of the said alleged law which is in violation of the Constitution of the United States as heretofore set out, and that it would be wholly inequitable to allow plaintiffs any relief whatever in or under the averment of their said bill. And this for a thirteenth defense.

XIV.

Defendants for another and further defense say that the plaintiffs and defendants were, prior to the year 1904, officers and members of the Cumberland Presbyterian Church of Marshall, Missouri; that upon becoming members of said congregation, plaintiffs, as well as defendants, agreed to be governed and controlled by the rules of said Cumberland Presbyterian Church and by the acts, regulations and decisions of the judicatories of said church; that the General Assembly of the Cumberland Presbyterian Church in the year 1904, adopted by a majority of the commissioners composing said General Assembly, a Plan of Union and re-union with the Presbyterian Church in the United States of America, and directed that said plan of union and re-union be submitted to the Presbyteries of said Cumberland Presbyterian Church for adoption or rejection, as provided by its form of government; that said plan of union and re-union was accordingly sent down for the action of said Presbyteries, and that a majority of the Presbyteries in favor of the adoption of said plan of union and re-union with said Presbyterian Church in the United States of America, under the name and with the doctrinal standards of said Presbyterian Church in the United States of America, as modified by a Declaratory Statement adopted in the year 1903; that in the year 1905 the General Assembly of the Cumberland Presbyterian Church assembled in the City of Fresno, in the State of California; that all of the Presbyteries of said church were represented therein by com-

missioners appointed for that purpose; that the New Lebanon Presbytery, with which the Marshall Church was connected and under whose jurisdiction it then was, was represented by ministers and elders duly appointed for that purpose; that said General Assembly represented the entire Cumberland Presbyterian Church in the United States and all of the individual churches thereof; that said General Assembly, in said year 1905, while sitting as a separate body representing the Cumberland Presbyterian Church, with commissioners elected from all of its Presbyteries, determined and decided that the union had been effectuated in accordance with the laws of the Cumberland Presbyterian Church and thereupon adopted the following resolution to-wit:

"Be it Resolved that this General Assembly does hereby find and declare that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church have voted approval of the re-union and union of said churches upon the basis set forth in said joint report, and does find and declare that said reunion and union has been constitutionally agreed upon by the Cumberland Presbyterian Church and that the said basis of union has, for the purposes of the union, been constitutionally adopted."

That the plaintiffs and those whom they represent at the time they became officers and members of the Cumberland Presbyterian Church of Marshall, Missouri, agreed and promised to abide by the decisions of the Church judicatories upon all ecclesiastical questions; that the right to enter into said union and the regularity of all the steps to carry the same into effect were submitted to said General Assembly and were arbitrated, settled and determined by it as between all said members of the Cumberland Presbyterian Church including both plaintiffs and defendants herein, and the same is binding upon the plaintiffs in this case, and defendants set up and plead said decision as binding upon all members of said church and that a failure to enforce and carry the same into effect, as is done in other arbitrations and in the decisions of other Church Courts, is violative of the Fourteenth Amendment of the Constitution of the United States, which defendant set up and plead in support of their rights to said property.

And after the action of said authorities and final declarations by the General Assembly of the Cumberland Presbyterian Church, in May, 1905, each and every one of the plaintiffs in this case and those acting in concert with them and who are represented by them in this action, continued to act with and claim membership in the Presbyterian Church of Marshall, Missouri, for more than eighteen months, and not one of the members of said church repudiated the action of the General Assembly during that time, and not until after the lapse of eighteen months from said decision by said General Assembly declaring said union consummated and effected, did the plaintiffs in this case then for the first time attempt or undertake to organize a new church congregation and elected new officers entirely separate and distinct from the old Cumberland Presbyterian Church of Marshall, Missouri, of which both plaintiffs, and defendants had been members; that some of the plaintiffs were officers of the Cumberland Presbyterian Church of Marshall, Missouri, prior to and in the year 1905, and continued for a long time to act as officers of the

church after said union had been effected and consummated, and that the entire membership of said church, by their acts and conduct, acquiesced in the declaration and decision of the General Assembly made in 1905, and continued to acquiesce therein for more than eighteen months, and in June, 1907, formed a new congregation, and that said plaintiffs did not set up any right of title or demand any possession of the property in this case by virtue of said new organization until more than four and one-half years after said union had been consummated and effected. This for a fourteenth defense.

Therefore these defendants say that it is unlawful, inequitable and unjust to further prosecute this action at great cost and expense when the said action in the said United States Court will decide and settle all the matters involved in this controversy and will be controlling in the end, and so these defendants say that this action ought by this court to be stayed until the decision can be had in the said United States Court.

Wherefore, having fully answered and shown their right in and to the property in this suit, these defendants ask the court to declare the beneficial use thereof to be in these defendants and their associates and successors, and that the plaintiffs and their associates, agents and officers be forever estopped from making any claim whatever to said property, and be restrained from in any way interfering with the defendants and their associates in the use of said property, and for such others orders, judgments and decrees as to the Court may seem meet and proper in equity to preserve and protect these defendants in their rights in and to said property, and for general relief.

BEN ELI GUTHRIE,
W. M. WILLIAMS,
VIRGIL V. HUFF,
Attorneys for Defendants.

The defendants offer the reply of plaintiffs to said amended answer of said defendants in said cause last above mentioned from page 53 said abstract of record, as follows:

On July 30, 1910, plaintiffs filed their reply to the amended answer of the defendants, which was a general denial of all new matters alleged in said amended answer.

The defendants offer in evidence in this cause the Amended Petition in the case of Chas. A. Boyles et al., Complainants, vs. J. L. Roberts et al., instituted in the Circuit Court of Johnson County, Missouri, from the Circuit Court of Cooper county, from the printed abstract of record in said cause on appeal to the Supreme Court of Missouri, from pages 3 to 13 inclusive thereof.

AMENDED PETITION. (Caption omitted.)

"Plaintiffs for their amended petition state that the Presbyterian Church in the United States of America, is an unincorporated voluntary religious society which has existed as such since a date prior to 1810, and that the Cumberland Presbyterian Church was also an unincorporated voluntary religious society which existed from about the year 1810, up to May, 1906, when it united with the Presbyterian

Church in the United States of America: both of said denominations existing under the Presbyterian form of government, having a gradation of Church Courts consisting of Session, Presbytery, Synod and General Assembly, each having certain control of the others in the order mentioned, the General Assembly being the highest Court; the session being composed of ruling elders who are members of the Church elected by the whole congregation, together with the minister in charge of said congregation; the Presbytery consisting of all the ministers and one ruling elder from each Church within a certain district and the ruling elders being elected from the various Churches by the session of each Church within said district, and the General Assembly being composed of members elected by and from all of the Presbyteries of the Church in the United States of America; that the Church Session exercises jurisdiction over a single Church, the Presbytery over what is common to the ministers, Church Sessions and Churches within a prescribed district, the Synod over what belongs in common to three or more Presbyteries and their ministers, Church Session and Churches, and the General Assembly over such matters as concern the whole Church; the Constitution of said Churches and their Ecclesiastical Standards all exist in printed form; that the General Assembly of the Cumberland Presbyterian Church as well as the General Assembly of the Presbyterian Church in the United States of America, was invested by the rules, regulations and practices of the Church with Legislative, Executive and Judicial authority, with power to decide all questions of Law, Doctrine or Ecclesiastical polity coming before it in judicial cases or other controversies, or propounded to it as an abstract question, or arising in the exercise of its reviewing or superintending power over the whole Church and to concert measures for promoting the prosperity and enlargement of the Church; that the General Assembly of each of said voluntary religious associations, as the highest representative body of each of said Churches was empowered and had the authority to initiate and effectuate a union with other Churches; that said action was taken by the General Assembly of the Cumberland Presbyterian Church in the year 1903, and also by the General Assembly of the Presbyterian Church in the United States of America, in the same year, that a committee was appointed from each of said Churches by the respective General Assemblies to confer upon the question of union; that the said committees after meeting and conferring, adopted a joint report to the respective General Assemblies of the two Churches that met in the year 1904, suggesting and recommending a plan and basis of union between said churches; that said reports were adopted by the respective General Assemblies of said Churches in 1904, and that such action was taken by the General Assemblies of each of said Churches in 1904, that said basis of union recommended by said committees was submitted to the Presbyteries to be by them acted upon, and their action reported back to the General Assemblies; that such action was taken by all of the Presbyteries of each of said Churches and reported to the General Assemblies of each of said Churches in the year 1905, and a majority of the Presbyteries of each of said Churches favored said basis of union; that said report was adopted by the General Assembly of each of said Churches in 1905, and said basis of union declared to be adopted

and said union consummated; that the committee on union was continued for further conference and to report the particulars and to arrange the details for the consummation of the union; that said committees after due conference made report to the General Assemblies of each of said Churches in 1906, and that such action was taken by the General Assemblies of said Churches in 1906, that the joint report in 1905 and 1906 were adopted, and the General Assemblies of both of said Churches respectively, decided that there existed substantial identity between the two creeds, and declared the union of said two Churches to be consummated, and that said United Church to be thereafter known as the Presbyterian Church in the United States of America, and this decision was concurred in by the Presbyteries of said Churches and the Assembly of said Cumberland Presbyterian Church and the Assembly of said Presbyterian Church; Plaintiffs state that said two Churches were by said action of the said General Assemblies properly and regularly united into one Church under the name of the Presbyterian Church in the United States of America, and that said United Church, thereby became, and is the legal successor of the Cumberland Presbyterian Church; that said union has been legally consummated and that as a result of said union whatever title, legal or equitable, to any property or right to control, possess or use the same, was possessed by any of the Members, Judicatories, or other Ecclesiastical Agencies of the Cumberland Presbyterian Church, passed by operation of law to the members or corresponding judicatory or agency of the United Church; they further state that all the members, including Ministers, of the Cumberland Presbyterian Church who renounce the United Church cease to be members of said Church, and that such renouncing ministers vacate their position as pastors and members of Presbyteries and Synods, and that all such renouncing officers, members of boards or committees, or persons in other Ecclesiastical positions vacate their respective offices or positions, and that all such ministers, officers and members relinquish all their right in and in relation to all church property; that in 1874 there were two deeds made and in 1889 another deed made to F. M. Cockrell, J. L. Roberts and W. K. Morrow, trustees for the Cumberland Presbyterian Church of Warrensburg congregation and their successors in office, for seventy (70) feet off the South end of the West half of Block "M" in Grover's Second addition to the City of Warrensburg, Johnson County, Missouri, as laid off on the plat of said Addition and of record in the office of the Recorder of Deeds in said county as shown by deeds recorded at Book 27, page 242, Book 28, page 296 and Book 96, page 349 of said records; that on said lot is situated the Church building in which is contained the Church property of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and that said trustees have held the title to said property for said Church from that date to the date of the union; that long prior to the making of said deeds there existed in the City of Warrensburg, Missouri, a congregation of the Cumberland Presbyterian Church, and a congregation of the Presbyterian Church of the United States of America; that after the plan of union had been declared adopted by the General Assembly of 1905, a plan or basis of union was submitted to and put in force by

the Presbyteries of the said two Churches by which they became united as one congregation in accordance with the general plan of union; that long prior to said union part of the Plaintiffs and those whom they represent constituted a majority of the congregation of the Cumberland Presbyterian Church, favored the union, recognized it and became a part of the United Church, which by virtue of said union is now the legal successor of the congregation of what was the Cumberland Presbyterian Church at Warrensburg, Missouri. That after the adoption of the union, the union services continued to be held in said building up to the 7th day of July, 1906, that on said 7th day of July, 1906, the said J. L. Roberts and W. K. Morrow having renounced said union, unlawfully and wrongfully refused the complainants and all of said Union Church, the right to use said Church building and forcibly, unlawfully and wrongfully changed the locks on said building and took forcible possession thereof, and ever since have maintained forcible possession thereof, and refuse to permit Plaintiffs or those they represent to use said building, and have ever since and still continue so to refuse, denying the right of Plaintiffs to the use of said property or any interest therein; that by the terms of the local union as adopted by the congregation of the Cumberland Presbyterian Church of Warrensburg, Missouri, and the Presbyterian Church in the United States of America, located at Warrensburg, Missouri, as submitted to their respective Presbyteries and by said Presbyteries approved as a basis of union, it was provided that the deacons which are elected at each successive election are and shall be ex-officio trustees to take charge of, manage, control and hold the legal title of all property whether real, personal or mixed; that heretofore belonged to either of said Churches, or that shall hereafter belong to said joint church, their control being subject to the direction of the session of said joint Church, as provided by the laws of the Church, provided by the laws of the and that the office of all trustees of all parties heretofore or theretofore elected or appointed trustees in any manner whatever, their office was created, be declared vacant and that they and each of them be and they are hereby directed to turn over all property of whatever kind or character in their possession to the deacons so elected by said joint Church as ex-officio trustees as their successors; that at a meeting of said joint Church on the day of 1906, it was by the session declared, by resolution, that G. M. Gilbert, William Shockey, A. J. Hutchinson, E. L. Thurber, C. O. Ozias, S. H. Coleman, G. W. Martin, Vance J. Day, Sam T. Bratton, J. R. Rothwell, Edward Beatty and Grover Gillum, who were elected at the last meeting, as deacons, are now declared to be trustees, in accordance with the provisions above set forth, and by said Session it was further directed that said deacons as trustees should immediately demand from W. K. Morrow and J. L. Roberts, who were heretofore trustees of the Cumberland Presbyterian Church, and whose offices have been vacated, the immediate possession of what was heretofore the Cumberland Presbyterian Church building, which is situated on the real estate hereinbefore described, and all property in their possession as such trustees, and that said deacons, as such trustees, shall immediately make written demand upon said W. K.

Morrow and said J. L. Roberts, providing the form of demand, and that on the 23rd day of July, 1906, said last named parties, as deacons and trustees of the United Church as aforesaid, and under and in accordance with the directions of the Session aforesaid, made written demand upon said J. L. Roberts and W. K. Morrow for said Church property, building and all Church property therein contained which had heretofore belonged to the Cumberland Presbyterian Church of Warrensburg, Missouri, which said demand the said Morrow and Roberts refused and have ever since and still refuse to comply with; that said Morrow and Roberts and those whom they represent assembled in said Church building, wrongfully claiming to be the continuation of the Cumberland Presbyterian Church, and elected said T. J. Summers as a trustee of said Church; that said Morrow, Roberts and Summers and those whom they represent have continued to hold possession of said building and assemble there and hold worship therein, pretending to be the Cumberland Presbyterian Church; that they were actuated by a common purpose and combined and conspired to accomplish that purpose; that their purpose was to repudiate the action of the General Assembly and the Presbyteries in entering into the union agreement and adopting the basis of union, and to renounce the reunited Church which resulted from the union; their purpose was to make the people of the Church believe that all who recognized the General Assembly of the United Church would be mere revolutionists and seceders and would forfeit all property rights and other rights as judicatories, ministers, officers or members of the Church; that they have undertaken to lay plans and create agencies to induce, by argument, persuasion and other means as many as possible of the membership to accept as true their representations, renounce the United Church and become associates and co-workers in said combination; that these voluntary champions of renunciation have made a great many people think that this was not a mutual union of two denominations, but a disorganization of the Cumberland Presbyterian Church and absorption of it by the Presbyterian Church; that these statements are made in the face of the highest judicatories of the two churches; that the Defendants have claimed and continued to claim that they are the Cumberland Presbyterian Church of Warrensburg, Missouri; that the membership of either or both of said churches is too numerous to be made complainants by name, and for other reasons mentioned it is impracticable so to do; that the complainants, C. A. Boyles, B. L. Seawell, C. D. Middleton, E. B. Stockton and A. D. Redford were elders of what was the Cumberland Presbyterian at Warrensburg, Missouri; that they, together with Plaintiffs W. C. Kapp, F. M. Walters, and John G. Scroggs are now the elders of the United Church, that is, the Presbyterian Church in the United States of America, that the complainants C. O. Ozias, S. H. Coleman, G. W. Martin, Vance J. Day, Sam T. Bratton, J. R. Rothwell, Edward Beatty and Grover Gillum, were deacons of what was the Cumberland Presbyterian Church of Warrensburg, Missouri; that they are, together with plaintiffs, G. M. Gilbert, William Shockey, A. J. Hutchinson and E. L. Thurber now the deacons of the United Church, that is, the Presbyterian Church in the United States of America at Warrensburg, Missouri, that Rev. Samuel Garvin, Plaintiff, was the

Pastor of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and is now the Pastor of the United Church of Warrensburg, Missouri; that the membership of the United Church and those who renounce the union and claimed to be Cumberland Presbyterians, are both too numerous to be made Complainants or Defendants by name, and for that reason it is impracticable so to do. Plaintiffs therefore pray to be permitted to file this bill in their own behalf and in behalf of all the members of Presbyterian Church in the United States of America, and especially in behalf of those members of said Church who formerly belonged to the Cumberland Presbyterian Church, and who now adhere to the United Church in the City of Warrensburg Missouri.

That, the Defendants, J. L. Roberts, W. K. Morrow and T. J. Summers, were elders in what was the Cumberland Presbyterian Church of Warrensburg, Missouri; that J. Ray Ramsey was a deacon of what was the Cumberland Presbyterian Church of Warrensburg, Missouri; that D. L. Barnett is now the acting sexton of what was the Cumberland Presbyterian Church of Warrensburg, Missouri; that Charles H. Harrison was a communicant and active promoter in the movement of the renouncers in what was the Cumberland Presbyterian Church of Warrensburg, Missouri; that said members of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, have employed as their regular Pastor, the Rev. H. Clay Yates, formerly of Bloomington, Illinois; that the members of what was the Cumberland Presbyterian Church who antagonize the union and have renounced the United Church, number about one hundred, are scattered and are fluctuating by changes, by withdrawals from the Church and additions to the Church and it is therefore impossible to make them Defendants by name; those who are named as Defendants in the bill are eminently representative in their character, official position and relation to the renunciation movement and to those engaged in it and associated with it.

Plaintiffs therefore pray that all of the ministers, officers, members, boards, committees, employees and agents of every character and description who are or claim to be part of the so-called Cumberland Presbyterian Church of Warrensburg, Missouri, be made Defendants to this bill and be represented by the name, Defendants herein enumerated, and that said named Defendants be required to defend for themselves and their unnamed co-defendants.

Wherefore in consideration of the premises Plaintiffs pray that the Defendants named in the caption of the bill be required to make defense of this bill; that on final hearing decree be rendered declaring that said union between said Churches was legally formed and is valid; that all of the property rights possessed by the Cumberland Presbyterian Church or any of its judicatories, or congregations passed by operation of law as a result of the union with said judicatories or congregations into the United Church; that all ministers, officers and members belonging to what was the Cumberland Presbyterian Church and adhering to the Presbyterian Church in the United States of America, constitute the true and lawful members of the various congregations, session, boards of deacons of the various congregations, and that all who have renounced or shall renounce, said United Church, have ceased, or will cease to be mem

bers of the Congregations, Sessions, Boards of Deacons, Presbyteries or Synods which formerly constituted the Congregations, Boards of Deacons, Presbyteries or Synods of the Cumberland Presbyterian Church; that all elders and deacons so renouncing the United Church have or will cease to be elders or deacons in said congregations, and cease to have any right to control or hold possession of any property belonging or appertaining to their respective congregations; that all pastors of Churches so renouncing the United Church have or will vacate their respective pastorates, and that all such renunciators will forfeit all their rights of property and all other rights of property and all other rights and privileges as members, officers, or ministers in said judicatories; Plaintiffs especially pray that the elders loyal to the United Church at Warrensburg, Missouri, be placed in the immediate possession of the Church property at said place, and their rights be declared and their possession be protected.

And further pray the Court to enjoin the ministers, officers and members of the Cumberland Presbyterian Church, at Warrensburg, Missouri, who renudiate and renounce the action of the General Assembly and the Presbyteries of said Churches in agreeing to and forming a union with the Presbyterian Church in the United States of America, or who renounce the United Church resulting from said union, known as the Presbyterian Church in the United States of America, together with all their associates, confederates, agents, and representatives, and that said persons be enjoined from doing the following things, to-wit:

First. From interfering with or molesting the Pastors, Elders Deacons, Church Members or other Ecclesiastical Agencies who adhere to and recognize said United Church, in the use, enjoyment, possession and exclusive control of all houses of worship, parsonages endowment funds or other property or effects which belong to the Cumberland Presbyterian Church or any of its Boards, Committees, Judicatories, Congregations or Institutions, or are held in trust for them.

Second. From using the name of the Cumberland Presbyterian Church as the name or any part of the name of any of their Organizations, Congregations, Sessions, Presbyteries, Synods, General Assemblies, Boards, Committees or other Ecclesiastical Judicatories, Institutions or Agencies Organization or Agency, or any one acting for it, that it is a Judicatory Organization or Agency of the original Cumberland Presbyterian Church as organized in 1810, as described in said deeds.

And Plaintiffs pray for such other and further relief as the Court in equity and good conscience may find them entitled to.

The defendants offer in evidence the Amended Answer in the said cause of Chas. A. Boyles et al., v. J. L. Roberts et al., instituted in the Circuit Court of Johnson County, Missouri, from the printed abstract of record in said cause on appeal from the Circuit Court of Cooper County, to the Supreme Court of Missouri, from pages 13 to 42 thereof:

AMENDED ANSWER.
(Caption omitted.)

Now at this day come the Defendants who have been served in person and for their joint and separate amended answer to Plaintiffs' amended petition, admit that the Presbyterian Church in the United States of America is an unincorporated voluntary religious society which has existed as such since a date long prior to 1810; admit that the Cumberland Presbyterian Church is also an unincorporated voluntary religious society which had its origin on or about the year 1810; deny that both of said denominations had and have a Presbyterian form of government having a gradation of Church Courts which are Denominated Sessions, Presbyteries, Synods and General Assemblies; deny that the Sessions, Presbyteries and Synods and General Assemblies are composed as in said petition alleged and exercise jurisdiction as therein stated; and deny that the General Assembly of the Cumberland Presbyterian Church as well as the General Assembly of the Presbyterian Church in the United States of America, was vested by the rules, regulations and practices of the Church, with Legislative, Executive, and Judicial Authority, with power to decide all questions of Law, Doctrine or other Ecclesiastical Polity coming before it in judicial cases or other controversies as propounded to it, as an abstract question, or arising in the exercise of its reviewing or superintending power over the whole Church, and to concert measures for the promotion of the prosperity and the enlargement of the Church; deny that the General Assemblies of each of said Churches or Associations, as the highest representative bodies thereof, were empowered and had the authority to initiate and effectuate a union with the other Churches; deny that such action was taken by the General Assemblies of said Churches in the year of 1903, that a committee was legally appointed from each or from either of the said Churches, by the respective General Assemblies thereof to confer upon the question of union; deny that said committees after meeting and conferring adopted a joint report to the General Assemblies of the two Churches that met in the year of 1904, suggesting and recommending plan and basis of union between the said Churches; and deny that any such report was ever legally adopted by the respective General Assemblies of the said Churches or either of them in 1904, deny that such action was taken by the General Assemblies of each of the said Churches, or either of them in 1904, that said basis of union by said committee was legally submitted to the Presbyteries to be by them acted upon and their action reported back to the General Assemblies; deny that such action was taken by all the Presbyteries of each of the said Churches and reported to their respective General Assemblies in the year of 1905, and that a majority of the Presbyteries of each of said Churches favored said basis of union; deny that in 1905, the said report was legally adopted by the General Assemblies of each of the said Churches, the said basis of union declared to be adopted and said union consummated; deny that the alleged committee on union made report to the General Assemblies of each of the said Churches in 1905, and that such action was taken by the General Assemblies of said Churches in 1906, that the joint reports of 1905 and 1906, were adopted and deny that the General Assemblies of both of said

Churches decided that there existed substantial identity between the two creeds and declared the union between the two Churches to be consummated, and that the said action was concurred in by the Presbyteries of the Cumberland Presbyterian Church and by the General Assemblies of both the said Churches; deny that the said two Churches were by the said action of the said General Assemblies properly and regularly united into one Church under the name of the "Presbyterian Church in the United States of America" and that said Union Church thereby became and is the legal successor of the Cumberland Presbyterian Church; deny there has been legally consummated between the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, any union whatever; but aver that the Cumberland Presbyterian Church is now, as it has been since its organization, a separate, distinct and independent body.

Further answering said amended petition, Defendants; deny that as a result of the alleged union what ever title, legal or equitable, to any property or right to control, possess or use the same, was held or exercised by any of the members, Judicatories, or other Ecclesiastical Agencies of the Cumberland Presbyterian Church, passes by operation of law to the members or corresponding Judicatory or Agency of the so-called "United Church"; deny that all the members, including the ministers of the Cumberland Presbyterian Church, who renounce the so-called United Church, cease to be members of said Church; but aver that such persons and members never were members of the alleged "Union Church," nor have they been in any way connected with the same; deny that such renouncing ministers vacate their positions as pastors and members of Presbyteries and Synods of the Cumberland Presbyterian Church; deny that all such renouncing officers, members of boards, or committees or persons in other ecclesiastical positions vacate their respective offices or positions in the Cumberland Presbyterian Church and relinquish all their right in, and in relation to all Church property belonging thereto.

Further answering said petition Defendants admit the execution of the deeds as in said petition alleged, to the persons therein named and conveying the property therein described; admit that on said tracts is situated the Church building in which is contained the Church property of the Cumberland Presbyterian Church of Warrensburg, Missouri; admit that the said trustees have held the title to the said property from the date therein named and aver that they still hold the title thereto as such trustees; admit that long prior to the making of the said deeds, the Warrensburg, congregation of the Cumberland Presbyterian Church was organized and that for a long time there has been and now is, in the City of Warrensburg, a congregation of the Presbyterian Church in the United States of America; but deny that after the alleged plan or basis of union had been declared adopted by the General Assembly of 1905, a plan or basis of union was submitted to and put in force by the Presbyteries of the said two Churches by which they became united as one congregation in accordance with the general plan of union; deny that prior to the said alleged union, a part of the Plaintiffs and those whom

they represented constituted a majority of the congregation of the Cumberland Presbyterian Church at Warrensburg, Missouri; deny that a majority of the said congregation favored the alleged union, recognized it and became a part of the so-called United Church; deny that after the alleged adoption of the so-called union, the services continued to be held in the said building up to the 7th day of July, 1906; deny that on the 7th day of July, 1906, the Defendants J. L. Roberts and W. K. Morrow, unlawfully and wrongfully refused the complainants and all of the so-called Union Church the right to use the said Church building and forcibly, unlawfully and wrongfully changed the locks on the said building and took forcibly possession thereof.

Further answering said amended petition, Defendants state that they have no knowledge or information as to whether or not by the terms of the alleged local union as adopted by the congregation of the Cumberland Presbyterian Church of Warrensburg, Missouri, and the Presbyterian Church in the United States of America, located at Warrensburg, Missouri, as submitted to their respective Presbyteries and by said Presbyteries approved as a basis of union, it was provided that the deacons which are elected at each successive election, are and shall be ex-officio trustees, to take charge of, manage, control and hold the legal title of all property whether real, personal or mixed, that heretofore belonged to either of said Churches, or that shall hereafter belong to the same, their control being subject to the direction of the Session of the said so-called joint Church, as provided by the laws of the Church, or that the offices of all trustees, heretofore or hereafter elected or appointed as such in manner whatever their office was created, be declared vacant and that they and each of them be and they are hereby directed to turn over all property of whatever kind or character, in their possession to the deacons so elected by said joint Church as ex-officio trustees as their successors; nor as to whether or not at a meeting of the Presbyterian Church held on the day of 1906, it was by the Session declared that G. M. Gilbert, William Shockley, A. J. Hutchinson, E. L. Thurber, Vance J. Day, Sam T. Bratton, J. R. Rothwell, C. O. Ozias, S. H. Coleman, G. W. Martin, Edward Beatty and Grover Gillum, deacons of the said Church, were declared to be trustees and directed to demand from J. L. Roberts and W. K. Morrow, the immediate possession of the Cumberland Presbyterian Church property as aforesaid, and therefore deny the same.

Further answering said amended petition, Defendants deny that the said Roberts and Morrow, and those whom they represent assembled in said building wrongfully claiming to be the Cumberland Presbyterian Church, and elected the Defendant T. J. Summers, trustee of the said Church, deny that the said Roberts, Morrow and Summers, and those whom they represent, were actuated by a common purpose and combined and conspired to accomplish the repudiation of the action of the General Assembly in entering into the alleged union agreement and adopting the basis of union and to renounce the so-called reunited Church, which resulted from the alleged union; deny that their purpose was to make people of the Church believe that all who recognize the General Assembly of the so-called United Church would be mere revolutionists and seceders and would

forfeit all property rights and other rights as Judicatories, minister, officers or members of the Church; deny that they and those whom they represent have undertaken to lay plan and create agencies to induce by argument, persuasion and other means, as many as possible of the membership to accept as true their representations, renounce the said Church and become associates and co-workers in said combination; deny that they as voluntary champions of renunciation made a great many people believe that the alleged union was not a mutual union of the two Churches, but a disorganization of the Cumberland Presbyterian Church and an absorption of it by the Presbyterian Church.

Further answering said amended petition Defendants deny that the membership of either or both of said Churches is too numerous to be made complainants by name, and that for any other reason to do the same would be impracticable; and deny that the complainant in said petition named have the right or authority to or in law can, represent the entire membership of the said Presbyterian Church in the United States of America; and deny that the Defendants named in said petition officially represent or have any legal connection whatever with the great body of the membership of the Cumberland Presbyterian Church of Warrensburg, Missouri, and that they have been authorized or commissioned to represent said membership or any of them, and do not so represent them in fact or in law.

Further answering said petition Defendants deny generally each and every allegation in said petition contained and not hereinbefore specifically admitted, or denied, and having fully answered, ask that said Injunction be dissolved and that Defendants recover their costs herein.

Further answering said petition, Defendants state the facts to be that the Defendants herein named, have no authority to represent nor to answer for any of the persons sought to be affected by this proceeding nor has any order been made requiring them to so act, and that for said reasons, there is a misjoinder of parties herein.

Defendants state that the Cumberland Presbyterian Church or denomination was organized in Dickson County, Tennessee, February 4th, 1810, being an outgrowth of the great Revival of 1800; that the founders of the said Church were Finis Ewing, Samuel King, and Samuel McAdow, all of whom had previously been ministers in the Presbyterian Church, but had been charged with "heresy" and excluded therefrom; that said founders rejected the Doctrine of Election and Reprobation as taught in the Westminster Confession of Faith; that thereafter a crude and imperfect Confession of Faith was formed and revised and enlarged from time to time, until in the year A. D. 1881, when two committees were appointed to revise and enlarge the Confession of Faith and Government of the Church; that said committees completed their task and reported the same to the General Assembly which convened at Huntsville, Alabama, in the year 1882; that said report was by said body unanimously adopted, and by it, referred to the various Presbyteries for their approval or disapproval, and was by said Presbyteries duly adopted as reported to the General Assembly which convened at Nashville, in 1883; that the said General Assembly, having reviewed these returns from the

various Presbyteries, formally declared said works to be the "Confession of Faith and Government" of the Cumberland Presbyterian Church; that this was the last Confession of Faith and Government adopted by the Cumberland Presbyterian Church and has since said time been and now is in full force and effect in said Church.

Defendants further state that the Cumberland Presbyterian Church has always been, and, as Defendants insists, now is a separate, independent, voluntary religious association, controlled and governed according to its said Confession of Faith and Government; that from the time of its foundation in the year 1810, as aforesaid, to the last meeting of the General Assembly in the month of May, 1906, the Cumberland Presbyterian Church extended its influence and organization into numerous states; until, at the latter date, it comprised 17 Synods, 114 Presbyteries, 1514 Ordained Ministers, 9614 Ordained Elders, 3914 Ordained Deacons, 2869 Congregations and had a total membership of 185,212.

Defendants further state that the General Assembly at Nashville Tennessee, in 1903, appointed a committee on "Presbyterian Fraternity and Union" to confer with like committees of other Presbyterian bodies, in regard to the desirability and practicability of closer affiliation among the members of the Presbyterian family in the United States of America; that this committee reported to the General Assembly at Dallas, Texas, in 1904, that it had agreed with a like committee of the Presbyterian Church in the United States of America, that each of the two committees should submit to its own General Assembly, their joint report favoring the reunion and union of the two Churches in one body under the name of the "Presbyterian Church in the United States of America," upon the Doctrinal basis of its Confession of Faith, as revised in 1903, and of its other Doctrinal and Ecclesiastical Standards, and upon certain conditions and recommendations contained in the said report; that the General Assembly illegally adopted the report by a close vote and referred the "basis of union" to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval; that the next General Assembly which met at Fresno, California, in 1905, appointed a special committee to consider and report the result of the action taken by the Presbyteries; that this committee divided and presented a majority and a minority report; that the majority report was illegally adopted by the close vote and the Moderator illegally declared that a majority of the Presbyteries had approved the proposition of union submitted to them; that in the minority report, and also in a separate paper filed by those voting for the minority report, an earnest protest was made that both reports recited that sixty Presbyteries had voted approval and fifty-one disapproval, but a tabulated statement exhibited with the majority report, showed however, that fifty-one Presbyteries disapproving had 137 more Presbyterian votes than the sixty-one Presbyteries approving; that the committee on Fraternity and Union was then increased, by the addition of other members, and directed to ascertain and report at the next meeting of the General Assembly such other steps as might be necessary for the completion of the proposed union; that the General Assembly at Decatur, Illinois, in May, 1906, received, and by majority vote adopted the report made by the enlarged commit-

tee; and, over the protest made by a large minority the Moderator, illegally declared the basis of union to be in full force and effect; that after the passage of a resolution to that end by the same majority, and over the vote and protest of the same minority, the Moderator attempted to declare the General Assembly adjourned sine die as a separate Assembly, to meet in and as apart of the 119th General Assembly of the Presbyterian Church in the United States of America, on the 3rd Tuesday in May, 1907, at a place not named; that the protest was made and filed before the roll call for adjournment and before the declaration was made by the Moderator; that the protest being disregarding and the purpose of the majority to adjourn without day and without naming the place for another meeting being persisted in, they were informed, on the floor of the Assembly before the adjournment took place, that the minority would treat the adjournment as illegal and ineffectual and would continue the session of the General Assembly thereafter; that immediately upon the announcement of the adjournment, as aforesaid, and before the majority had actually dispersed, J. H. Fussell, one of the minority commissioners, announced in a loud voice, in the hearing of the entire Assembly, then in the Assembly Hall, that the business of the General Assembly would be resumed at once in the G. A. R. Hall, near by, the Church in which the previous part of the session was held having been refused them for that purpose; that the minority commissioners then repaired to the said hall and there elected a Moderator, and other officers, to fill the places of those who had gone away, and the previous declaration that the union was in full force and effect, was treated as ineffectual and recinded, and the unfinished business of the General Assembly was then taken up transacted and the Assembly adjourned to meet again on the 3rd, Tuesday in May, 1907, at Dickson, Tennessee.

Defendants state that no other proceedings were ever had by either the General Assembly of the Cumberland Presbyterian Church, its Presbyteries or committees, legally appointed, relating to or effecting the question of union and reunion, other than herein named and that Plaintiffs are dependent thereon for the authority and support of the alleged "union" and the maintenance of this action.

Defendants state that the aforesaid steps on the part of the General Assembly and the Presbyteries of the Cumberland Presbyterian Church, and similar steps, in the main, on the part of the General Assembly and the Presbyteries of the Presbyterian Church in the United States of America, did not effectuate a union between the two Churches and merge the Cumberland Presbyterian Church, its ministry, membership and property into the Presbyterian Church in the United States of America, as Plaintiffs allege, but that said acts and each of them were and are null and void and of no force and effect whatever, for the reasons: that, there was no constitutional power nor authority in the Cumberland Presbyterian Church to form and accomplish such a union and merger; that, every step taken to that end by the Presbyterians and the General Assembly of that Church was in violation of its constitution, ultra vires and void; that section 24 of the constitution, which is found in printed book, called, "Confession of Faith and Government of the Cumberland Presby-

terian Church," a copy of which is filed and marked as an exhibit hereof, the Courts of the Church are named and their powers defined in regular gradation, and are Denominated Sessions, Presbyteries, Synods, and the General Assembly, which said section is in words and figures as follows: "It is necessary that the government of the Church be exercised under some certain and definite form, and by various Courts and in regular gradation, these Courts are denominated Church Session, Presbyteries, Synods and the General Assembly," that the jurisdiction of these Courts is limited by the express provisions of section 25, of the said Constitution to the right to resolve questions of Doctrines and Discipline, seriously and reasonably proposed, to maintain truth and righteousness, condemn erroneous opinions and practices which tend to the injury of the Church; which said section is in words and figures as follows:

"The Church Session exercises jurisdiction over a single Church; the Phesbytery over what is common to the Ministers Church Sessions, and Churches within a prescribed district; the Synod, over what belongs in common to three or more Presbyteries and their ministers, Church Sessions, and Churches; and the General Assembly, over such matters as concern the whole Church; and the jurisdiction of these Courts is limited by the express provisions of the Constitution. Every Court has the right to resolve questions of Doctrine and Discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to injury of the peace, purity and progress of the Church; and although each Court exercises exclusive original jurisdiction over all matters specifically belonging to it the lower Courts are subject to the review and control of the higher Court, in regular gradation. All Church Courts shall be opened and closed with prayer."

That the powers of the General Assembly are specifically enumerated in section 43, of said Constitution, and comprise the power to receive and decide all appeals, references and complaints regularly brought before it from the inferior Courts; to hear testimony against error in Doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting Doctrines and Discipline; to give its advise and instructions in conformity with the government of the Church; to redress whatever may have been done contrary to order; to concert measures for promoting its prosperity and the enlargement of the Church; to create, divide and dissolve Synods, to institute and superintend the agencies necessary in the general work of the Church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contention and disputation according to the rules provided therefor; to receive under its jurisdiction other Ecclesiastical bodies whose organization is conformed to the Doctrine and order of the Cumberland Presbyterian Church; to authorize Synods, and Presbyteries to exercises similar power in receiving bodies suited to become constituents of these Courts and lying in their respective geographical bounds; to superintend the affairs of the whole Church and to correspond with other Churches; and to recommend measures for the promotion of charity and holiness throughout the Churches under its care; which said section is in words and figures as follows.

"The General Assembly shall have power to receive and decide all appeals, references, complaints regularly brought before it, from the inferior Courts; to hear testimony against error in Doctrine, immorality in practice, injuriously affecting the Church; to decide in all controversies respecting Doctrine and Discipline; to give its advice and instruction, in conformity with the government of the Church; to redress whatever may have been done contrary to the order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide or dissolve Synods, to institute and superintend the agencies necessary in the general work of the Church; to appoint Minister to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations according to the rules provided therefor; to authorize Synods and Presbyteries to exercise similar power in receiving bodies to become constituents of these Courts, and lying within their geographical bounds respectively; to superintend the affairs of the whole Church, to correspond with other Churches; and in general, to recommend measures for the promotion of truth, charity and holiness throughout the Churches under its care."

Defendants further state that under the provisions of said Section, full and elaborate as they are, no power or authority to form and accomplish a union or merger of the Cumberland Presbyterian Church, with or into another Church was given; nor does it authorize the General Assembly to make or entertain such a proposition; that the jurisdiction of the General Assembly, is limited by the Constitution to the express provisions thereof, and these provisions do not confer the power which the said so-called unionists have attempted to exercise.

Defendants state that the relation sought to be established between the two Churches is not a union or reunion of the said bodies, but is an attempted merger of the Cumberland Presbyterian Church into and an absorption of it by the Presbyterian Church in the United States of America, and which if effected would completely and entirely destroy the identity of the said Cumberland Presbyterian Church, and exterminate the same; which was beyond the power of the said Church or its Judicatories to do or to consent to be done; that the power of self-destruction or self-surrender was foreign to the thoughts and language of the framers of the Constitution, and the possibility of such a catastrophe was not contemplated by them; that no power to accomplish such a result was given, and none can be inferred; that express limitations of the powers of the General Assembly and of the Presbyteries to certain enumerated subjects is equivalent to a positive prohibition against usurpation of any other power, as defendants are advised and believe.

Further answering said petition and as a further defense thereto, Defendants state that before a union or merger of the Cumberland Presbyterian Church with or into the Presbyterian Church in the United States of America, or any other denomination or society can be affected it was necessary to amend the Constitution and Government of the said Church in the manner and form prescribed the Constitution and Laws thereof; that the proposition attempted to be submitted to the Presbyteries by the General Assembly at Dallas, Texas, was not intended to effect some amendments to the Confes-

sion of Faith of the Cumberland Presbyterian Church, nor was any such result accomplished thereby for the reason that, as the Defendants are advised and believe, no definite and specific amendment was proposed in the General Assembly and by it definitely and positively approved; that the joint report on the subject of the union was adopted and resolutions were passed directing that the "Basis of Union," therein recited "be and is recommended to the Presbyteries of the Cumberland Presbyterian Church for its approval or its disapproval," that neither that report nor the resolution submission can, as Defendants are advised and believe, properly be treated as a proposed amendment to the Confession of Faith, or the Laws of the Church; that the "basis of union" was the thing submitted to the Presbyteries and not a proposed amendment to the Constitution and laws of the Church authorizing a union of the two Churches or denominations; that the question thus submitted to the Presbyteries, as the Defendants are advised and believe, has none of the essential elements of an amendment nor was it propounded or passed in the General Assembly as an amendment, nor was it by that body recommended to the Presbyteries for their approval and adoption as such, but was submitted to the Presbyteries merely for the purpose of obtaining the sense of the said body upon the plan or basis of union proposed; that the same is not sufficient in form and was not submitted in the way and manner to render it binding and effectual as a part of the Constitution and Laws of the Church; that the said proposition was not submitted to the Presbyteries nor acted upon by them according to the provisions of the Constitution relating to amendments thereto.

Defendants further state that at the time the vote was taken in the General Assembly at Dallas, Texas, to submit to the Presbyteries of the Cumberland Presbyterian Church the proposition of the so-called union of the two Churches, for their approval or disapproval; it was understood and stated by the Moderator then presiding, that the action then being taken was not intended as an expression of judgment of the General Assembly, in favor of union on the proposed basis, but was submitted as was understood and expressly stated by the said Moderator at the time the vote was taken, without recommendation of the said Assembly, and that but for said statement and belief, said proposition would have been defeated, that relying upon said statements and believing them to be true, many of the commissioners who opposed the proposed union upon the said basis, voted for said proposition; that at the time said vote was taken and said matter submitted to the Presbyteries as aforesaid, a majority of the commissioners then in attendance at the said Assembly were opposed to a union between the said Churches upon the plan or basis proposed.

Defendants state that by reason of the statement or announcement of the Moderator of the said Assembly, as aforesaid, and the action of the Presbyteries in pursuance thereof, Plaintiffs are estopped and should not, either in law or equity, be permitted to assert the contrary herein.

Further answering said petition, Defendants state that the commissioners and representatives of the Cumberland Presbyterian Church, and all those persons belonging to said congregation who

opposed the said proposed union, at all times, earnestly protested against the action of the General Assembly and of the Presbyteries, in furthering and promoting the said scheme of union, and that, at the time the said joint report on "Reunion and Union" was adopted by the General Assembly on the 3rd day of May, 1906, said commissioners were present and voted against the adoption thereof, and, at the time, filed their protest, in writing, signed by one hundred of said commissioners, who were present, immediately after the vote was taken, and became a part of the minutes of the said Assembly; that thereafter, an attempt was made by the Unionists to adjourn the said Assembly sine die, but said attempt was abortive and of no legal consequence, for the reason; that the same was in violation of the provisions of section 41, of the constitution of the Church, which require adjourning orders of that body to name both the time and place of its next meeting; which the said Assembly failed to do.

Further answering said petition, and as a further defence thereto Defendants state that the alleged Union and merger asserted by the complainants are illegal, inoperative and void, and of no force and effect, for the reason; that, the Presbyterian Church in the United States of America, is not of the same, or substantially the same faith and order of the Cumberland Presbyterian Church; that the doctrine of the two Churches were and are absolutely variant and irreconcilably antagonistic in certain essential and substantial points and respects; that the differences that led to the expulsion of the founders and formation of the Cumberland Presbyterian Church by them still exists, unchanged and unaltered, as a part of the Confession of Faith of the Presbyterian Church in the United States of America, as adopted in the year 1788, as well as of the Cumberland Presbyterian Church; that the Confession of Faith of the Presbyterian Church in the United States of America, and the catechisms thereof have ever taught and still adhere to, without change or modification, the doctrine of special election and reprobation; that some men and angels are predestinated unto everlasting life, while others are foreordained to everlasting death, that they are particularly and unchangeably designed, their number being so certain and definite that it cannot be increased or diminished; that God hath appointed the Elect only to glory, and foreordained all the means thereunto; that those who are elected, being fallen in Adam, are redeemed by Christ, effectually called unto Faith in Christ by his Spirit working in due season; are justified, adopted, sanctified, and kept by his power through Faith unto salvation; that no others are redeemed by Christ, effectually called, adopted, sanctified, justified and saved, but the Elect, who are predestinated unto life according to the eternal and immutable purpose of God and the secret counsel and good pleasure of His will, having been chosen in Christ, unto everlasting glory out of the free grace and love of God, without any foresight of Faith or good works or perseverance in either of them, or any other things in the creature, as conditions or causes moving thereunto; that the rest of mankind, God was pleased, according to the unsearchable counsel of His will, to pass by and to ordain them to dishonor and wrath for their sins; that effectual calling is the work of God's almighty power and grace, whereby (out of his especial love to his Elect, and from nothing in them moving him thereunto he doth in his accepted time in-

vite and draw them to Jesus Christ by his word and spirit that all the Elect, and they only, are effectually called and that the rest of mankind are left in their unbelief and never to truly come to Jesus Christ; that Elect infants, dying in infancy, are regenerated and saved by Christ through the Spirit, as are all other Elect persons who are incapable of being outwardly called by the Minister of the word; that the Cumberland Presbyterian Church, from its organization to the present time has denounced and condemned the said doctrines and teachings of the Presbyterian Church in the United States of America, as foresaid, and by its Confession of Faith, Catechisms and other Doctrinal Standards, taught and sought to promulgate the Doctrines that God, for the manifestation of his glory and goodness, freely and unchangeably ordained and determined what he himself would do and what should be the award respectively of the obedient and the disobedient; that all divine doctrines may be revealed to us, yet it is certain that God has decreed nothing contrary to his revealed will or written word; that in creating man in his own likeness God endued him with intelligence, sensibility and will which form the basis of moral character and render man capable of moral government; that the freedom of the will is a fact of human consciousness, and is the whole ground of human accountability; that man, in his state of innocence, was both free and able to keep the divine law or to violate it, without any constraint from either physical or moral cause, that in this condition he did violate it; that God, having sent forth his son Jesus Christ, as a propitiation for the sins of the world did most graciously vouchsafe a manifestation of the Holy Spirit with the same intent to every man; that Jesus Christ tasted death for every man, and now make intercession for transgressors, by virtue of which the Holy Spirit is given to convince of sin and enable man to believe and obey; that the call of the Holy Spirit was not irresistible, but is effectual in those only who, in patience and faith, freely surrender themselves wholly to Christ; and that all infants, dying in infancy, and all persons who have never had the faculty of reason are regenerated and saved.

Defendants further state that the so-called "Declaratory Statements," adopted by the Presbyterian Church in the United States of America, in the year of 1903, are not in effect a revision of the Confession of Faith of the said Church, and have not made any change or alteration in the original and objectionable sections of the Westminster Confession of Faith, referred to therein; nor were they intended as such, but merely purport to be explanations of the sections therein referred to; which could have been made as well and as consistently in 1788 and 1810, as in 1903; that the object and purpose for which the declaratory statements were enacted as well as the effect designed and intended to be given to them by their authors were fully declared and set out in the following resolution adopted by the General Assembly of the Presbyterian Church in the United States of America, in 1904.

"Resolved 4, that the Assembly in connection with this whole subject of union with the Cumberland Presbyterian Church, places on record its judgment, that the revision of the Confession of Faith, effected in 1903, has not impaired the integrity of the system of Doctrine contained in the Confession of Faith and taught in the Holy

Scriptures, but was designed to remove misapprehension as to the proper interpretation thereof."

Defendants state that the declaratory statements and the plan of basis of union formulated and arranged in pursuance thereof, are deceptive and misleading and have caused and induced thousands of honest and faithful communicants of both of said denominations, to accept and indorse the same as a revision and modification of the said Confession of Faith, and acquiesce in the said proposed plan or basis of union.

Further answering said amended petition Defendants state that whatever the General Assembly may have intended and attempted to adjudge, if anything, by adopting the report of its committee on overtures in 1903, and the joint report on "reunion and union" in 1904, and the majority report of the special committees in 1905, and the joint report in 1906, these Defendants declare it had no lawful power, in that manner, to adjudge that the so-called union had been constitutionally agreed to by the Cumberland Presbyterian Church, and that the basis of union had been constitutionally adopted, for the reasons, that the said acts and each of them were Legislative and not Judicial in their character; and that, in adopting the said reports in the years 1905 and 1906, it had no power to decide, authoritatively and did not decide that there then existed substantial identity in the creeds of the two Churches; that the question of the identity in the two creeds, as Defendants are advised and believe could not be decided nor even raised legally in said way and manner; that no proposition or resolution affirming such identity was submitted to the General Assembly at any time, either as a matter of original cognizance or by appeal from an inferior Court of the Church, and that no such action has at any time been decided by the General Assembly; that such an act would be and is inconsistent with the constitution of the Church and, therefore null and void.

Defendants further state that they are informed and believe, that the loyal commissioners constituting the General Assembly in the G. A. R. Hall, all regarded themselves as legal representatives, in that body, of the Cumberland Presbyterian Church, and, as such their having legal authority to do all they did, and so declare.

Wherefore, Defendants say that the action of the General Assembly of the Cumberland Presbyterian Church at Decatur, Illinois, in May, 1906, in declaring a union between said Church and the Presbyterian Church in the United States of America, effectuated and consummated, or the merger of the Cumberland Presbyterian Church into the Presbyterian Church in the United States of America, to be fully completed and perfected, was in violation of the rules, usages and practices of the Cumberland Presbyterian Church, without authority and warrant of law and contrary to the provisions of the constitution of the Cumberland Presbyterian Church, in full force and effect, and is therefore void.

Further answering said amended petition, and as a further defence thereto defendants declare and state that they, and those who cooperate with them, are entitled, under the constitution of the United States and of the State of Missouri, & have a perfect right, in both law and conscience, to worship God in whatever form and manner and by whatever name they see fit to designate themselves, consistent with

morals and good conscience and not contrary to law, and that the Plaintiffs have no right or authority to invoke the injunctive power of a Court of Equity to restrain or prohibit the same, and that any attempt to so prohibit and restrain the Defendants, is in derogation of and an infringement upon said constitutional rights of liberty of conscience, and are therefore void.

Further answering said amended petition, Defendants state that the chief and only object and purpose of this action is to litigate and determine the legal title to the property in said amended petition described; that said controversy involves purely a question of law as to the legal title or status of the said real estate; that the same has been determined in a Court of law, the only legal and power tribunal to hear and determine such controversies, and that a Court of Equity has no jurisdiction nor authority to hear and determine the same, nor to enforce and protect the rights of the parties therein, and in relation thereto, until the same shall have been heard and determined in an appropriate action at law.

As a further answer and defence to said amended petition, Defendants aver that the proceedings of the General Assembly of the Cumberland Presbyterian Church held at Dallas, Texas, in the year 1904, relating to and affecting the question of the proposed reunion or union between the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America, were not intended, as heretofore alleged as a step toward or in the line of promotion of the cause of union between the said Churches, but merely for the purpose of obtaining from the various Presbyteries of the Cumberland Presbyteries of the Cumberland Presbyterian Church, an expression of approval or disapproval of said proposed scheme of reunion or union, and that the subsequent action of the Moderator and stated Clerk of said Assembly in so recording, declaring and announcing that the question of union had been submitted to and adopted by the Presbyteries of the General Assembly was deceptive, false and untrue and was a fraud upon the membership of the Cumberland Presbyterian Church, who opposed and held in great disfavor the said proposed scheme or plan of union upon the basis therein specified; and that said acts by the said Moderator, stated Clerk and other officers and judicatories co-operating with them therein, were wilful and were made fraudulently and for the purpose of deceiving and misleading the great body of the membership of the said Church, and thereby inducing them to submit to and asquiesce in said plan or scheme of reunion or union as aforesaid; whereby, and by reason of which, said proceeding and every part thereof were and are null and void and of no force and effect.

Further answering said amended petition and as a further defence thereto, Defendants state that the attempt of the Plaintiffs and those whom they profess to represent to deprive the defendants of membership in the Cumberland Presbyterian Church to transfer them into the Presbyterian Church in the United States of America, contrary to their will and wish, is in violation of the provisions of Section 6, Article II, of the constitution of the State of Missouri, which provides that, "no person can be compelled to—support or at-

tend any place or system of worship, or to maintain or support any Priest, Minister, Preacher or Teacher of any Sect, Church, Creed or Denomination or Religion," and is therefore void.

Further answering said amended petition, Defendants state that the real estate and property described in said amended petition, belong to the membership of the Warrensburg congregation of the Cumberland Presbyterian Church, and each member has a substantial interest therein, and cannot be deprived thereof, so long as he continues a member of said Church, without due process of law, that the attempt of the so-called Unionists to transfer the property of the said congregation to the Presbyterian Church in the United States of America, was, and is without due process of law; and is therefore in violation of the provisions of Section 30, of Article II, of the Constitution of the State of Missouri, which provides that no person shall be deprived of . . . property without due process of law, and is therefore null and void.

Further answering said amended petition and as a further defence thereto, Defendants state that the Ecclesiastical polity and government of the two Churches are widely at variance with each other, and under the laws, governments and practices of the Presbyterian Church in the United States of America, cannot be reconciled and harmonized among the membership of the two Churches; that in the said Presbyterian Church there is a complete equality of standing in respect to citizenship, being no distinction of sex, race or condition that the white and black membership are declared to be of one family, and share in a common life; that the government of the Cumberland Presbyterian Church provides for and maintains separate Church organizations and Presbyteries for black or colored members and does not authorize or tolerate union worship of the two races.

Wherefore, Defendants state that by reason of the premises said alleged union is unauthorized, and cannot be upheld.

Further answering said amended petition, Defendants state that all of the transactions and proceeding had by the various Church Judicatories of the Cumberland Presbyterian Church and Presbyterian Church in the United States of America, including the Sessions, Presbyteries and General Assemblies of the respective denominations or Churches, touching and affecting the civil or temporal rights of the membership of the Cumberland Presbyterian Church in and to the property owned and held by the various congregations of the Cumberland Presbyterian Church, and more particularly the membership of the Warrensburg, congregation of the said Cumberland Presbyterian Church, in and to the property described in Plaintiffs' amended petition, are without authority, ultra vires and void; for the reason, that said Judicatories, or Courts are Ecclesiastical in their origin and jurisdictional power, and are without power and authority to adjudicate and determine property rights between the members of contending factions of a congregation, or of Churches of the same or of different denominations.

Further answering said amended petition, Defendants state that neither the General Assembly, Synods nor the Presbyteries of the

Cumberland Presbyterian Church, had nor possessed the original or inherent power to effect a union of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America, nor to authorize a merger thereof, into the said Presbyterian Church in the United States of America, and that the said attempt to unite the same or affect merger thereof, is therefore null and void.

Wherefore, Defendants say that Plaintiffs ought not to recover in said action; that said temporary injunction should be dissolved, by the Court, the Plaintiffs' bill dismissed and the cost of this proceeding be taxed against the complainants.

Further answering said petition and as a further defence thereto, the Defendants state that the Warrensburg congregation of the Cumberland Presbyterian Church, was organized in the City of Warrensburg, Johnson County, Missouri, on the day of January, 1846; that in the year 1866, the said congregation was revived and has continued to exist and grow until this date; that by three deeds of conveyance, the lands described in Plaintiffs' amended petition were conveyed to J. L. Roberts and W. K. Morrow, Defendants herein, and to one F. M. Cockerel, named therein as trustee for the Warrensburg congregation of the Cumberland Presbyterian Church at Warrensburg, Missouri, and to their successors in office; that by and under the terms of said conveyances, the said named persons hold the legal title to the said real estate in trust for the use and benefit of said congregation of the Cumberland Presbyterian Church; that at and prior to the time said conveyances were made, the said congregation adhered to the rules, usages and practices and professed and taught the Doctrines and Tenets as found and contained in the Confession of Faith and Government of the said Church, filed herewith and were irreconcilably opposed to the rules, regulations, governments and doctrines then and now practiced, professed and taught by the Presbyterian Church in the United States of America; that the said property together with all the improvements thereon, including the Church building and furniture therein, were bought and provided by means of voluntary contributions and gifts from members and friends, of the said congregation; that said contributions were made for the express purpose of providing a Church house and place of worship for the said congregation and to be held, used and controlled by it and the members thereof for such purposes alone; that the same was not bought or provided by any of the Boards, Presbyteries, Synods or the General Assembly of the Cumberland Presbyterian Church or the Presbyterian Church in the United States of America, and that they have no interest therein, nor right to the control thereof; that, by reason thereof, said property became, and now is trust property, and is held for the specific purposes, to-wit: The use and benefit of the Warrensburg congregation of the Cumberland Presbyterian Church, the dissemination of the Tenets and Doctrines indorsed and taught at said time, and for said purposes alone; that no other person, combination of persons or corporations, other than the membership of the said congregation, or of corporation form by them and

adhering to the Doctrines, acquired, nor has or have any interest therein; that, prior to the 7th day of July, 1906, the Plaintiffs herein and those whom they represent voluntarily renounced the Faith and Doctrines of the Cumberland Presbyterian Church and their allegiance to said congregation, withdrew therefrom and united themselves with the Presbyterian Church in the United States of America, at Warrensburg, Missouri; a congregation and denomination professing a Faith and Doctrine at variance with and antagonistic to that held and professed by the said Cumberland Presbyterian Church, prior to and at said time; that they thereby ceased to be and were no longer, members of the said congregation of the said Cumberland Presbyterian Church and had and have no interest in the property thereof nor right to its use, control or possession; that, the Defendants Roberts and Morrow, being the legal trustees of the said property, by virtue of said deeds of conveyance and as such trustees of the said Church, had full power and control over said property as relates to all civil matters pertaining thereto, and in any way affecting the said trust, and having refused to renounce the Faith of the Cumberland Church, and to withdraw from its Warrensburg congregation, and to unite themselves with the Presbyterian Church in the United States of America, continued as, and now are the lawful trustees of the said trust; that the said G. M. Gilbert, William Shockey, A. J. Hutchinson, E. L. Thurber, C. O. Ozias, S. H. Coleman, G. W. Martin, Vance J. Day, Sam T. Bratton, J. R. Rothwell, Edward Beatty and Grover Gillum the alleged deacons and ex-officio trustees of the Presbyterian Church in the United States of America, had not, at the time of the institution of this suit, nor have they now, any interest whatever in said property, nor any right to the use, control or possession thereof; and their attempt to possess and control the same, is an illegal usurpation and an attempted abuse and perversion of the said trust, and is therefore void.

Defendants further state, that for some time prior to the said 7th day of July, 1906, the so-called "United Church" and the Cumberland Presbyterian Church separately used and worshiped in said Church property, by consent of the officers of the Cumberland Presbyterian Church; that just prior to the 7th day of July, 1906, it was announced by the authority of the Session of the Presbyterian Church in the United States of America, that, thereafter, all services of said congregation would be held in the said Church property, intending thereby, as was declared by Plaintiffs', to take full and exclusive possession of said property for and in the name of the Presbyterian Church in the United States of America, and pervert the same from the uses and purposes to which it was originally dedicated that in order to prevent the wrongful and illegal usurpation and diversion of the said Church property by the Plaintiffs, the said J. L. Roberts and W. K. Morrow, a majority of the said trustees, did on the 7th day of July, 1906, take charge of said church property, in the name of the Warrensburg congregation of the Cumberland Presbyterian Church and closed the doors thereof against the Plaintiffs and all others who had abandoned the Cumberland Presbyterian Church and become members of the Presbyterian Church in the United States of America, in Warrensburg, Missouri, and refused to permit

and allow them to use and occupy the same, as such, as it was their duty to do.

Defendants further state that the majority of the membership of the Warrensburg congregation of the Cumberland Presbyterian Church now are, and have always been opposed and never have agreed to said union of the said Churches, upon the basis proposed and have never agreed to said union or to a union of the local congregations of the said Churches, upon said basis, and to abandon the local organization of the said Cumberland Presbyterian Church; but have ever opposed and now oppose the same; that being willing to a close and intimate association of, and with all of God's people, and the congregation of the 1st, Presbyterian Church of Warrensburg, Missouri, being without a Pastor, the Defendants favored and joined in the invitation to the membership of said congregation to worship with them; that when the question of approval or disapproval of the proposed basis of union was referred by the General Assembly of the Cumberland Presbyterian Church that convened at Dallas, Texas, in May, 1914, the Plaintiffs herein and those co-operated with them and favored the said proposed union, being largely in authority in the control and management of the affairs of the Warrensburg congregation of the said Church, wilfully and designedly so conducted themselves and used and abused the trust and confidence reposed in them by the membership of said Church, as to enable an inconsiderate minority of said membership to rule and control the said Church in matters relating to and affecting the proposed union of the two Churches; as well as, in the formation, submission and adoption of the plan of tentative union between the Warrensburg congregation of the Cumberland Presbyterian Church and the said congregation of the Presbyterian Church in the United States of America, in this, viz: that after said proposed basis of union was referred to the various Presbyteries by the Dallas General Assembly, as aforesaid and the time for the selection or election of a delegate to the Lexington Presbytery arrived, B. L. Seawell, of said congregation, was duly and properly elected as such delegate and was instructed to vote against said proposed basis of union; that thereafter an illegal meeting of said Session was wrongfully held at which time it was wilfully attempted to rescind and in form did rescind the action of the Session, directing said delegate to vote for the approval thereof; that the said B. L. Seawell, in violation of the instructions to vote against said proposed basis of union attended the Presbytery in September, 1904, and wrongfully voted in favor of said proposed "Basis of Union;" that thereafter, the proceedings of the Session, re-considering the action of the former meeting of said Session, directing the said delegate to vote against the approval of said proposed "Basis of Union," were by the consent of the Plaintiffs, declared null and void and of no effect, for the reason that there was not a quorum present and participating in said meeting; that the fact of the illegality of said Session meeting, was known to the Plaintiffs, at the time the same was held, but that said meeting was held, in the absence of the Defendants, and for the purpose of taking advantage of the Defendants and the majority of the Church membership, as was done, and give the said delegate an excuse to ignore his instructions and to

vote for the said proposed basis of union; that at the time of the agitation of the said proposed union of the two denominations and of the local congregation at Warrensburg, Missouri, the Plaintiffs and those who actively co-operated with them, caused a congregational meeting to be called, the object being not announced, and informed and advised all of those in sympathy with said union movement, personally, and induced them to be present thereat, so that, when the question of tentative union of the two local congregations was proposed and, for the first time suggested, they had a majority of those attending said meeting in favor of said temporary union; that the Defendants who were present, for the first time learned of the object and purpose of said meeting, then and there earnestly opposed tentative union and opposed and objected to the consideration of said question at said time and requested the Plaintiffs and the majority attending said meeting to defer the further consideration thereof, to a future meeting, but that the Plaintiffs refused a further consideration thereof, and refused to grant the Defendants and the great majority of the said congregation, who were absent therefrom, and nearly all of whom were opposed to and would have opposed said proposed local union, upon the basis submitted, had they been informed of the object and purpose of said meeting and been present and participated therein; that, under these circumstances and conditions said matter was wrongfully pressed to a vote and determination at said meeting, greatly to the injury and detriment and against the will of the majority of the said congregation, as aforesaid.

Defendants further state, that through all subsequent proceedings, had in said congregation, touching, or in anyway affecting the question of local union of the said Churches, they have actively opposed the said proposed union and earnestly protested against the taking of any and all steps tending to effectuate and consummate a local union between the said Churches on the basis proposed in said submission; that a large majority of said congregation was during all said proceedings, and now is opposed to said proposed union of the said congregations and to the said proposed tentative local union between the two congregations, and that said facts were well known to the Plaintiffs at any and all times during the agitation of said question.

Defendants further state, that the said Warrensburg congregation of the said Cumberland Presbyterian Church, after the withdrawal of that portion of its membership who united themselves with the Warrensburg congregation of the Presbyterian Church in the United States of America, from the said Warrensburg congregation of the Cumberland Presbyterian Church, and the vacation thereby of the offices formerly held by them therein, the said congregation of the Cumberland Presbyterian Church at once proceeded to and did properly fill said vacancies therein, and the organization of the said Church has ever since said time, been and now is fully maintained, as a continuation and perpetuation of the said Congregation of the Cumberland Presbyterian Church as aforesaid.

Wherefore, Defendants say that, by reason of the premises aforesaid, the temporary injunction heretofore granted herein should be

dissolved; the bill of the Plaintiffs filed herein, dismissed, and the costs hereof taxed against the complainants.

And further, the Defendants pray the Court to adjudge and determine all the matters and differences in controversy herein, and to find that the Defendants and those who co-operate with them in opposition to said proposed union, constitute and comprise the true and only Warrensburg congregation of the Cumberland Presbyterian Church, as founded in the year 1810; that, the alleged union of the two Churches, or the merger of the Cumberland Presbyterian Church into the Presbyterian Church in the United States of America, as well as the local tentative union attempted to be effected between the two Warrensburg congregation of said Churches, to be without authority and warrant of law and null and void; that all former members of the Cumberland Presbyterian Church at Warrensburg, Missouri, who have withdrawn from the said congregation and Church, and united themselves with the Presbyterian Church in the United States of America, have thereby forfeited all their rights as members of the said congregation of the Cumberland Presbyterian Church, and forfeited all their interests in and right to the control of the property thereof; that the Defendants, J. L. Roberts and W. K. Morrow, and the said F. M. Cockrell, are the legal trustees, of the said property and hold the title to the same for the use and benefit of the Warrensburg congregation of the Cumberland Presbyterian Church, the rightful owner thereof, and that the complainants herein restore the possession of said property to the proper authorities of the said congregation, and for all other, further and proper relief in the premises.

35. The defendants offer in evidence the Reply in said cause of Chas. A. Boyles et al., v. J. L. Roberts et al., instituted in the Circuit Court of Johnson County, Missouri, from the printed abstract of record in said cause on appeal from the Circuit Court of Cooper County, to the Supreme Court of Missouri, from pages 44 to 45 of said abstract.

"Now come Plaintiffs, and for reply to Defendants' joint and separate answer admits that the General Assembly of the Cumberland Presbyterian Church at Nashville, Tennessee in 1903, appointed a committee on Presbyterian Fraternity and Union to confer with like committees of like Presbyterian bodies in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States; admit that this committee reported to the General Assembly at Dallas, Texas, in 1904, that it had agreed with a like committee of the Presbyterian Church in the United States of America, that each of the two committees should submit to its own General Assembly their joint report, favoring a reunion and union of the two Churches into one body under the name of the Presbyterian Church in the United States, upon the Doctrinal basis of its Confession of Faith as revised in 1903, and of its other Doctrinal and Ecclesiastical Standards and upon certain conditions and recommendations contained in the said reports; admit that the General Assembly of the Cumberland Presbyterian Church adopted the said report and referred the basis of union to the Presbyteries of the said Cumberland Presby-

terian Church for their approval or disapproval; admit, that the next General Assembly at Fresno, California, in 1905, appointed a special committee to consider and report the result of the action taken by the Presbyteries; admit, that this committee divided and presented a majority and minority report; admit, that the majority report was adopted and that the Moderator declared that a majority of the Presbyteries had approved the proposition of union submitted to them; admit, that the same was approved by a vote of sixty-one Presbyteries as against fifty-one against it; admit, that, the committees on Fraternity and Union were then increased by the addition of other members and directed to ascertain and report at the next meeting of the General Assembly such steps as may be necessary for the completion of the union; admit, that the General Assembly at Decatur, Illinois in May, 1906, received and by majority vote adopted the report made by the enlarged committee and that the Moderator declared the basis of union to be in full force and effect; admit that after the adoption of said report, the said General Assembly adjourned sine die as a separate Assembly, to meet in and as a part of the 119th General Assembly on the third Thursday in May, 1907.

Further replying Plaintiffs deny each and every allegation of new matter in said answer contained not hereinbefore specifically admitted.

Wherefore having fully replied Plaintiffs pray judgment as in their petition prayed.

35a The defendants now offer in evidence the opinion of the Supreme Court of the State of Missouri, rendered in October, 1909, in *Boyles, et al., vs. Roberts, et al.*, on appeal from the Circuit Court of Cooper county, Missouri, the pleadings in which said cause are hereinbefore offered and set out, as follows:—

This is one of the numerous cases in the different States which resulted from what is called a Union between the Presbyterian Church of the United States of America and the Cumberland Presbyterian Church, alleged to have been consummated in the year 1906. Both were voluntary unincorporated religious societies. The Presbyterian Church of the United States of America has for its foundation the Westminster Confession of Faith, known alike to profane and ecclesiastical history. In what was known as the great revival of 1800, which spread over Kentucky, Tennessee and other portions of the South, and in which Dr. McGready was one of the leading spirits, so great was the demand for the Gospel, that the more educated and intelligent laymen, of devout character, were called and did preach. This revival as we gather from the early history of the Cumberland Presbyterian Church, was opposed by many of the straighter laced Presbyterians, and the same opposed the uneducated ministers who in the course of this great revival had buckled on their armor and hied to the field of action. In Cumberland Presbytery the "Revival Party" as it was called, was strongly in the ascendency and this Presbytery had dared to send forth some of their educated laity to preach. In 1805, the Synod of Kentucky, under whose jurisdiction was the Cumberland Presbytery, appointed a Commission of ten ministers and six elders to meet at Gasper River Meeting House and investigate the proceedings of Cumberland Presbytery. The

"Anti Revival Party" was largely in the majority in the Synod, and from this majority the investigators and triers of the fact were selected. The charges against Cumberland Presbytery were, (1) that such Presbytery had licensed men to preach and ordained others to preach and administer the church ordinances contrary to the rules of the church, and (2) that such Presbytery did not require such men so licensed and ordained to adopt the Presbyterian Confession of Faith, further than they believed it to be the word of God. As a result of this Commission many preachers and licentiates were silenced from preaching. Shortly thereafter in 1810, three ministers of the Presbyterian Church, who were not in accord with the Westminster Confession of Faith, organized the new Church. They pointed out the doctrinal differences which led to their action, which differences it may become necessary to note in detail later. From an humble beginning the Cumberland Presbyterian Church grew and continued to grow, until in 1906 it had to its Credit 114 Presbyteries, 17 Synods, a General Assembly, 1514 ordained Ministers, 9614 ordained Elders, 3914 ordained Deacons, 2869 Congregations, and a total membership of 185,212. One of these Congregations, was located at Warrensburg, Missouri, and a schism therein has occasioned the case now before us. The petition in the case, which is one for injunction, sets out the steps of the alleged union of the two Churches. Plaintiffs, who sue for themselves and in behalf of all the members of the Presbyterian Church of the United States of America, and especially for those members who were formerly members of the Cumberland Presbyterian Church at Warrensburg, Missouri, ask that the defendants be enjoined and restrained from certain things, which are better stated in their prayer for relief, thus:

"And further pray the Court to enjoin the ministers, officers and members of the Cumberland Presbyterian Church, at Warrensburg, Missouri, who repudiate and renounce the action of the General Assembly and the Presbyteries of said Churches in agreeing to and forming a Union with the Presbyterian Church in the United States of America, or who renounce the United Church resulting from said Union, known as the Presbyterian Church in the United States of America, together with all their associates, confederates, agents and representatives, and that said persons be enjoined from doing the following things, to-wit:

First. From interfering with or molesting the Pastors, Elders, Deacons, Church Members or other Ecclesiastical Agencies who adhere to and recognize said United Church, in the use, enjoyment, possession and exclusive control of all houses of worship, parsonages endowment funds or other property or effects which belong to the Cumberland Presbyterian Church or any of its Boards, Committees, Judicatories, Congregations or Institutions, or are held in trust for them.

Second. From using the name of the Cumberland Presbyterian Church as the name or part of the name of any of their Organizations, Congregations, Sessions, Presbyteries, Synods, General Assemblies, Boards, Committees or other Ecclesiastical Judicatories Institutions or Agencies, in connection with the claim on the part of said Judicatory, Organization or Agency, or any one acting for it, that it is a Judicatory Organization or Agency of the Original Cum-

berland Presbyterian Church as organized in 1810, as described in said deeds.

And plaintiffs pray for other and further relief as the Court in equity and good conscience may find them entitled to."

The real bone of contention is three lots of ground upon which is a church house, which was deeded to trustees for the Cumberland Presbyterian Church of Warrensburg, Missouri. The petition is long, as also is the answer thereto. By answer, the defendants, among other things deny the validity of the alleged union, and claim that by reason thereof, and that by reason of their deeds they are entitled to the property.

Other matters, of both petition and answer may become pertinent later and if so will be advised to in the course of the opinion.

Going further into the historical part of the case, it appears that in 1903, the Presbyterian Church, U. S. A., amended its Confession of Faith by some additions thereto, and it also undertook to declare what certain other portions, although written in plain English, meant. Shortly thereafter, through overtures, the two Churches appointed committees upon Unions. These committees devised what they called a scheme or plan of union and reunion. Why both words union and re-union were used, will only appear in the shades of the back ground, and then only to the careful thinker. The Cumberland Presbyterian Church was a separate and distinct entity and always has been. Its religious tenets were different and its church polity different. As a church entity it never had been a part of the other church. The joint report of its committee was submitted and voted upon by the General Assembly of each of the two Churches. It will only be necessary to note the action of the Cumberland Presbyterian Church in detail.

The Courts or Judicatories of the Cumberland Presbyterian Church consisted first, of a Church Session, made up of the minister and the ruling elders, the latter chosen by the Congregation; secondly, the Presbytery made up of the ministers and certain selected ruling elders for the several Congregations in a certain district; thirdly: a Synod, made up of three or more Presbyteries, and; fourthly, of a General Assembly. We have noted them in regular gradation beginning with the lowest. In 1904, this joint report was presented to the General Assembly by the Cumberland Presbyterian Church. The material portions reads:

"Therefore, we cordially recommend to your respective General Assemblies, that the reunion of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church be accomplished as soon as the necessary steps can be taken, upon the basis hereinafter set forth.

1. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church, Los Angeles, California, May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Church, Nashville, Tenn., May 21st, 1903, shall be united as one Church, under name and style of The Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate Churches now possess.

2. The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and Scriptures of the Old and New Testaments, shall be acknowledged as the inspired word of God the only infallible rule of faith and practice.

3. Each of the Assemblies shall submit the foregoing Basis of Union to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?"

Each Presbytery shall, before the tenth day of May, 1905, forward to the Stated Clerk of the Assembly with which it is connected, a statement of its vote on the said Basis of Union.

Upon the incoming of this joint report, the following resolution was offered by Dr. Templeton, in the General Assembly.

"Resolved, 1. That the foregoing Report and Supplemental Report of the Committee on Presbyterian Fraternity and Union, appointed by the General Assembly in 1903, be received and spread upon the minutes of this General Assembly, and that the included Joint-Report on Union be adopted; and that the Basis of Union be and is recommended to the Presbyteries of the Cumberland Presbyterian Church for their approval or disapproval.

Resolved, 2. That the moderator and the Stated Clerk be instructed to submit the Basis of Union, contained in said report, to the usual constitutional manner, upon receiving official notification of the adoption of the said Joint-Report on Union by the General Assembly of the Presbyterian Church in the United States of America."

This resolution was adopted by a vote of 162 to 74, and was declared to be by the constitutional two-thirds vote. Upon a submission to the Presbyteries the question to be categorically answered, set out above, it was found that 111 Presbyteries had returned their vote. Of these, 60 answered the question in the affirmative and 51 answered it in the negative. A summary of the vote in the 111 Presbyteries voting upon this question shows that 691 ministers and 649 elders, or 1340 voted for union and 470 ministers and 1007 elders or total of 1477, voted against union, so that whilst the question was answered in the affirmative by a majority of five Presbyteries, it was answered in the negative by a majority of 137 votes of those ministers and elders who voted thereon. The Union was declared adopted.

In the General Assembly of the Cumberland Presbyterian Church for the year 1906, just after the resolution as to union and reunion was declared passed by the vote above mentioned there was a protest signed by a hundred of the commissioners, in which they charged the invalidity of the action upon many grounds not necessary

here to state. The Assembly appointed a committee to answer the protest and after its answer was read, and some other business was transacted, the majority adjourned the Assembly sine die. Before this was done however the protestants gave notice that they would continue the work of the General Assembly under the rules, Confession of Faith and practice of the Cumberland Presbyterian Church. Pursuant to such notice the protestants did reorganize such Assembly, proceeded with their work and finally adjourned to a day and place named for the next meeting. From that time to this there has been a General Assembly under which were Synods, Presbyteries and Congregations, regularly meeting and adhering in the strictest letter to the Cumberland Presbyterian Confession of Faith, as well as to the name. Now to the particular case.

The defendants in this case were within the jurisdiction of the Lexington Presbytery and entered their protest to that body. In answer to their protest, they were, after kindly admonitions as to their spiritual welfare, notified that they had no standing in that Judicatory and that the Civil Courts would not protect them in their alleged property rights, for that such Assembly in addition to advice from attorneys of their respective Boards, had taken the written opinion of 17 lawyers and Judges of Courts, both Federal and State, and with one accord they held that the property interest of the Cumberland Presbyterian Churches had been so safeguarded as to have been safely transferred to the Presbyterian Church, U. S. A. Just who had the temerity to approach a Judge of a Court for a written opinion upon a disputed legal proposition, or what Judges, both State and Federal, so far forgot their high position as to give such opinion, we are not advised by the record. Suffice it to say that notwithstanding this reply, the defendants held possession of the property in dispute, and this action resulted.

The temporary injunction was made permanent as to the property in question, but by the frace of the Judge, nisi, the defendants were permitted to cling to the name Cumberland Presbyterians.

From this judgment involving to this property and constitutional questions as well, the defendants in proper order and due time appealed to this Court. This sufficiently states the case for a discussion of legal questions involved.

I.

An all important preliminary question is as to what extent this, a civil Court, can go into the questions raised in this case. As has been stated, there was a division in the C. P. General Assembly when the union of the two Churches was declared adopted. A very large minority of the Commissioners after having protested and giving notice before final adjournment, immediately elected proper officers and proceeded with the General Assembly and adjourned it to a named time and place and such General Assembly is going on under the Constitution of the Cumberland Presbyterian Church, with its Congregations, Presbyteries and Synods. There is also a division in the local congregation, some having gone over to the Presbyterian Church, U. S. A., and others remaining steadfast to the original organization. The question before us is to determine property rights

in a case wherein there is a schism in a church organization from its highest to its lowest Judicatory, as well as in its membership. Presbyterian disputes of this character are not new to this Court. We have had them before. Respondents contend in effect that we have but to register the edict of the highest church Judicatory, and by so doing pass all Cumberland Presbyterian property to the Presbyterian Church, U. S. A. Appellants contend that the action of the General Assembly was *ultra vires* and void.

In an early Presbyterian controversy, the case of *Watson vs. Garvin*, 54 Mo. l. c. 377, this Court said:

"At the threshold of this inquiry, we are met with the startling proposition that, in cases like this, the judgments or decrees of ecclesiastical Judicatories are final and conclusive, and that the civil Courts have no authority in the premises, except to register these decrees and carry them into execution. It is to be regretted that loose expressions, by elementary writers, and also by Judges in delivering their opinions, have given too much foundation for this false doctrine. Even the Supreme Court of the United States, in *Watson vs. Jones*, 13 Wallace, 679, gives prominence to this idea by making it the chief foundation of their opinion. That Court seemed to think the Judges not sufficiently learned in ecclesiastical law to pass on such questions, and that the ecclesiastical Courts, being better qualified than themselves, ought to be allowed to be the exclusive Judges.

The civil Courts are presumed to know all the law touching property rights; and if questions of ecclesiastical law, connected with property rights, come before them, they are compelled to decide them. They have no power to abdicate their own jurisdiction and transfer it to other tribunals. If they are not sufficiently advised concerning the questions that arise, it is their duty to make themselves acquainted with them, in all their bearings, and not to blindly register the decrees of tribunals having no jurisdiction whatever over property."

The opinion recognized that there were certain Church decisions or adjudications that it would not interfere with, not on the theory that such adjudications were in any way binding upon this Court, but on the theory that this Court had no Jurisdiction of the subject matter involved in the cases. On this question we then said:

"The true ground why civil Courts do not interfere with the decrees of ecclesiastical Courts, where no property rights are involved, is not because such decrees are final and conclusive, but because they have no jurisdiction whatever in such matters, and cannot take cognizance of them at all, whether they have been adjudicated or not by those tribunals. This principle forms the foundation of religious liberty in Republican governments. The civil authorities have no power to pass or enforce laws abridging the freedom of the citizen in this regard, and hence, in matters purely religious or ecclesiastical, the civil Courts have no jurisdiction.

A deposed minister or an ex-communicated member of a church cannot appeal to the civil Courts for redress. They can look alone to their own Judicatories for relief and must abide the judgment of their highest Courts as final and conclusive. But when property rights are concerned, the ecclesiastical Courts have no power to pass on them so as to bind the civil Courts. If they expel a member from

his church, and he feels himself aggrieved in his rights of property by the expulsion, he may resort to the civil Court, and they will not consider themselves precluded by the judgment of expulsion, but will examine into the case to see if it has been regularly made upon due notice, and if they find it be duly made, they will let it stand, otherwise they will disregard it, and give the proper relief. In most cases, no doubt, the judgment will be found to be sufficiently regular to fix the status of the expelled member and to warrant the civil Courts in denying the desired relief."

Under a note to the case of *Hendrix et al. vs. People's United Church of Spokane et al.*, 4 R. A. (New Series) p. 1154, the learned annotator thus speaks of the *Watson* case, *supra*.

It is apparent, therefore, that, unless there is some civil or property right involved so as to confer jurisdiction upon the civil Court, the questions as to the effect of a decision of the ecclesiastical tribunal cannot legitimately arise. The distinction is clearly drawn in the statement of the Court in *Watson vs. Garvin* 54 Mo. 355, that the true ground why civil Courts do not interfere with the decrees of ecclesiastical Courts where no property rights are involved is because the Courts have no jurisdiction whatever in such matters, and cannot take cognizance of them at all, whether they have been adjudicated or not by these tribunals."

In *Prickett vs. Wells*, 117 Mo. l. c. 504, this Court further said:

"While it is true that the civil Courts may not properly interfere with that part of Church management which concerns the spiritual welfare and discipline of the members yet, when rights of property are involved in controversies of this class, those Courts cannot justly evade the exercises of such jurisdiction as is necessary to the determination and vindication of such rights."

And to a like effect is *Fulbright vs. Higginbotham*, 133 Mo. l. c. 677, whereat it is said:

"It is well settled law that the civil Courts have and will exercise no jurisdiction to review the action of ecclesiastical bodies in matters relating purely to the faith and discipline of the church. It was for the congregation itself to determine whether these members held to doctrine that was contrary to that taught and held by the church, and to prescribe the rules of disciplines. But the members of these bodies have the same right as those of other voluntary associations of persons formed for charitable and benevolent purposes to seek the aid of civil Courts to prevent a diversion of its property from the uses and trusts to which it was devoted, and to secure to the members the enjoyment of the rights of membership in respect to the use of the property. It therefore sometimes becomes necessary for the civil Courts, for the purpose of determining property rights of members to pass upon questions which are ecclesiastical in their nature. *State ex. rel. vs. Farris* 45 Mo. 183. *Prickett vs Wells*, 117 Mo. 503; *Russie vs. Brazzell*, 128 Mo. 107."

In the case of *Russie vs. Brazzell*, 128 Mo. l. c. 113, we said:

"The question on this branch of the case is, did the revised confession, as requested by the members and adopted by the general conference, so change the distinctive doctrines of the church as to destroy its identity, and operate as a perversion of the trust under which

the property in question was held? However embarrassing it may be, it becomes our duty to determine this question. The action was one at law. The question thus raised is one of fact, which was passed upon by the Circuit Court without declaration of law, and the conclusion reached is binding upon this Court, unless the finding was clearly erroneous. *Mead vs. Spalding*, 94 Mo. 47, and cases cited."

For the purpose of determining the question as to whether or not there had been a diversion of the property which was held in trust, in the *Russie* case, we compared the two Confessions of Faith (the old and the new) and determined the right of property by determining that there was in fact no change in the creed of the church, and in so doing we followed the cases of *Slichter vs. Keiter*, 156 Pa. St. 145, *Kims vs. Robertson*, 154 Ills. 394 and *Bear vs. Heasley*, 98 Mich. 300, which cases had considered the same revised Confession of Faith that we had under consideration. The latter case held that there was a difference between the original and amended documents, the former two that there was not. But each case passes upon the question. All these cases grew out of disputes having their origin in certain amendments made to the Confession of Faith of the Church of the United Brethren in Christ. The organization was a large one and cases reached the appellate Courts of several States as above indicated.

An analysis of our cases show that in cases where civil or property rights are involved the Courts of this State will inquire into matters ecclesiastical.

In the *Watson* case, *supra*, we held an act of the General Assembly of the Presbyterian Church, U. S. A. to be invalid and void, and to do so reviewed the Constitution of the Church seeking for the alleged authority claimed by the General Assembly. So that this Court has authorized an investigation of the fundamental laws of the Church to determine whether or not its acts were valid thereunder.

In the *Russie* case, *supra*, for the purpose of determining whether or not property had been diverted from a trust, we compared the two Confessions of Faith, to see whether or not they differed in doctrine. Thus it appears that under our holdings, we will for ourselves examine such instruments for that purpose.

And may we now be permitted to add that in our humble judgment, it would be a flagrant violation of constitutional mandates for the civil Courts of this State, in cases involving property rights, to attempt to hide behind the judgments and decrees of any ecclesiastical tribunal. The duty of our Courts in such cases is to investigate the facts, and all the facts bearing upon the issue as property rights. If that investigation in a measure intrudes upon the decrees of bodies having no authority to pass upon property rights, there is no remedy for it. Of those pure ecclesiastical questions of creed, faith or church discipline we should wash our hands, unless an investigation thereof is required to determine property rights. If for that purpose it should be required, our constitutional duty is to so investigate. Some of the Courts are not as explicit in terms as was this Court in the case of *Watson vs. Garvin*, *supra*, but from the cases may be deduced the following.

(a) Civil Courts will investigate ecclesiastical decrees when it becomes necessary so to do in determining property rights.

Grimes' Executor vs. Harmon, et al, 35 Ind. l. c. 254; Smith vs. Pedigo, 145 Ind. l. c. 375; Hatfield vs. Delong, 156 Ind. l. c. 207; Bird vs. St. Mark's Church 62 Iowa l. c. 573; Bridges vs. Wilson, 11 Heisk, l. c. 470; Deadrick vs. Lamson, 11 Heisk, l. c. 507; Associated Reform Church vs. Trustees etc., 4 N. J. Ch. 77; Free Church of Scotland vs. Lord Overton, et al, Appeal cases, 1904, p. 515, et, seq.

All of these cases and those that follow under further lettered subdivisions recognize the right of civil Courts to investigate matters ecclesiastical in case property rights are involved. We shall not quote lengthily, nor from all, but as indicative of the trend of authority, short excerpts from some cases upon the question involved under each subdivision, is at least pardonable in view of the bold stand taken by counsel for respondents in the oral argument before the Court and reiterated in briefs filed herein, i. e., that for no purpose would the civil Courts go behind the adjudications of ecclesiastical tribunals. So strong did they put it in oral argument that they declared that if an ecclesiastical Judicatory declared that the word "white" meant "black," we had to enter the decree. The writer received such argument with a mental reservation of a right to dissent therefrom, but this dissent is better expressed in the case law than can we, with our limited ability, express it.

In the Grimes case, *supra*, the Indiana Court says:

"That over the church, as such, the legal tribunals do not have, or profess to have, any jurisdiction whatever, except to protect the civil rights of others and to preserve the public peace. All questions relating to the faith and practice of the church and its members belong to the church judicatories to which they have voluntarily subjected themselves. But the civil Courts will interfere with churches and religious associations, and determine upon questions of faith and practice of a church when rights of property and civil rights are involved."

Note the language contained in the last sentence. Does that mean that a church Court can say black is white and the civil Court be bound thereby. Not by a long ways. It means what it says, as should church confessions mean what they say. It means that the Courts will determine the meaning of the documents which express the doctrine of faith, aided by such lights as the law permits. And why not? In all other cases wherein the rights of property is on trial the civil Courts must construe all written instruments introduced in evidence and bearing upon the issues. That we will not construe them in purely ecclesiastical cases, in which no property rights are involved, is because they cannot lawfully be before us for construction. But if a civil, as distinguished from a pure ecclesiastical right is before us, we must construe them and determine their effect in so far as the property interest is concerned.

Again says the Indiana Court in the Smith case, *supra*:

"While the Courts of this State have no ecclesiastical jurisdiction whatever, yet they are charged with the duty and clothed with the jurisdiction of protecting property-rights of religious societies, corporations and churches, as well as that of individuals, and thereby, of necessity, they may be compelled to decide a question of ecclesias-

tical law when that law becomes a fact upon which property rights depend. They ought not, however, to be inclined to "rush in where angels fear to tread," and where necessity does not compel them."

In the Bird case, *supra*, the Iowa Court says:

"The civil courts will not revise the decisions of churches or religious associations upon ecclesiastical matters; but they will interfere with such associations when rights of property or civil rights are involved."

In the Deaderick case, *supra*, the Tennessee Court, following Gartin vs Penick, of the Kentucky Court, says:

"The rule is thus laid down and we think correctly, by Judge Robertson, of the Supreme Court of Kentucky, in the case of Gartin vs. Penick, 9th Am. Law. Reg. 213, that, while the general desire of the Courts is to avoid ecclesiastical or spiritual questions, they find it impossible to do so. If a body of men have wrongful possession of a church, or a sum of money, on the pretense, for example, that they are the religious body to which the money or the building was destined, their opponents have no right of redressing the wrong and vindicating their own right, except by appealing to the civil tribunals of the country, and civil tribunals have no means of doing justice in such cases, except by investigating into differences of doctrine, discipline, or practice, which, to the litigants may be religious differences, but to the Judge are mere matters of fact, bearing on a question of civil right. He then adds, that while Courts could not control or mould the faith or doctrines of the Church, nor settle questions of orthodoxy, yet 'so far as the identity of the respective claimants with the beneficiary to whom the church property was dedicated, may be effected by their doctrines, or by the acts of the General Assembly in the case, the essential coincidence of the doctrines and the legal effect of those acts must necessarily be considered for the purpose of deciding the question of title to the property. These principles will sustain the jurisdiction of civil Courts in cases like the present, and the views we have above expressed."

(b) And in the investigation of property rights the civil Courts will investigate and see that the church Judicatory has acted, and if so, whether it has acted within the terms of the constitutional grant of power.

If beyond the constitutional provisions of the church, the acts will be declared void. *Watson vs. Garvin*, *supra*. *Watson vs. Avery*, 2 Bush. 332; *Perry vs. Wheeler*, 12 Bush. l. c. 549; *Gartin vs. Penick*, 5 Bush. 110; *Bouldin vs. Alexander*, 15 Wallace, 131; *Krecker vs. Shirley*, 163 Pa. St. l. c. 551; *Brundage vs. Dearforff*, 55 Fed. 839; *Kerr's Appeal*, 89 Pa. St. l. c. 112; *McAuley's Appeal*, 77 Pa. St. 397; *McFadden et al. vs. Murphy et al.*, 149 Mass. 341.

Speaking to the contention that the action of the church Judicatories of the Presbyterian Church could not even be questioned upon the ground that the action was unconstitutional, and that such bodies were judges of their own Jurisdiction, the Court of Appeals of Kentucky in the *Watson* case, *supra*, says:

"Such a construction of the powers of church tribunals would, in our opinion, subject all individuals and property rights, confided or dedicated to the use of religious organizations, to the arbitrary

will of those who may constitute their Judicatories and representative bodies, without regard to any of the regulations or constitutional restraints by which, according to the principles and objects of such organizations, it was intended that said individual and property rights should be protected.

Especially is this so with reference to the powers of the higher Courts of the Presbyterian Church. Those powers are not only dear to the appealees, that the inferior Courts and people of the church are bound to accept as final and conclusive the assembly's own confined, but limited by the constitution. But if it be true, as insisted struction of its powers, and submit to its edicts as obligatory, without inquiring whether they transcend the barriers of the constitution or not, the will of the assembly, and not the constitution, becomes the fundamental law of the church.

But the constitution having been adopted as the supreme law of the church, must be supreme alike over the assembly and people. If it is not, and only binding on the latter, the supreme Judicatory is at once a government of despotism and unlimited powers.

But we hold that the assembly, like other Courts, is limited in its authority by the law under which it acts; and when rights of property, which are secured to congregations and individuals by the organic law of the church, are violated by unconstitutional acts of the higher Courts, the parties thus aggrieved are entitled to relief in the civil Courts, as in ordinary cases of injury resulting from a violation of a contract, or the fundamental law of a voluntary association."

This is partially applicable to the case at bar because upon the question of limitation of power, the Cumberland Presbyterian constitution, is similar to that of the Presbyterian.

So too says Mr. Justice Strong in the Bouldin case, *supra*:

"But we may inquire whether the resolution of expulsion was the act of the church, or of persons who were not the church, and who consequently had no right to ex-communicate others. And, thus inquiring, we hold that the action of the small minority, on the 7th and 10th of June, 1867, by which the old trustees were attempted to be removed, and by which a large number of the church members were attempted to be excinded, was not the action of the church, and that it was wholly inoperative."

In the Kreckler case, *supra*, the Pennsylvania Court said:

"But if such decisions plainly violate the law they profess to administer, or are in conflict with the laws of the land, they will not be followed: Commonwealth ex, rel, vs. Cornish, 13 Pa. 228; Stack vs. O'Hara, *supra*."

And on the same page the Court also says.

"It does not matter that a majority of any given congregation or annual conference is with those who dissent. The power of the majority as well as that of the minority is bound by the discipline and so are all the tribunals of the church from the lowest to the highest: McAuley's Appeal, 77 Pa. 397; Sutter et al., v. The Reformed Dutch Church, 42 Pa. 503; Stack v. O'Hara, 90 Pa. 477; Schlichter et al., v. Keiter, et al., 156 Pa. 119."

In Kerr's case, *supra*, the same Court, in speaking of a previous case decided by it in which the Court had sustained a mandamus to reinstate certain excinded members of a church, says.

"This was indeed but a reiteration of that principle so well known to our jurisprudence that the decree of a church Judicatory is binding only when it is affirmatively shown that it had acted within the scope of its authority and has observed its own organic forms and rules. But the decree under consideration is not only open to the objection that it is not in accord with the wellknown law of the church, but no one shall be condemned without due process, but it is also open to the charge that it is opposed to the cardinal principles of natural justice as being a Judicial sentence without notice or hearing: Gibson, C. J., in *Commonwealth v. Green*, 4 Whart. 601.

As a Judicial decree, therefore, the synodical resolution was ultra vires and ineffectual to dispose of the charter and property of the Second Reformed Congregation."

It thus appears that Missouri does not stand alone when in the *Watson* case, we examined the Constitution of the Presbyterian Church and condemned its action as ultra vires.

And in the *Brundage* case, *supra*, no less a personage than Judge William H. Taft, in speaking of an amended Confession of Faith, has said:

"Even if the supreme Judicatory has the right to construe the limitations of its own power and the civil Courts may not interfere with such a construction, and must take it as conclusive, we do not understand the supreme Court, in *Watson v. Jones* to hold that an open and avowed defiance of the original compact, and an express violation of it, will be taken as a decision of the supreme Judicatory which is binding on the civil Courts."

In *Bear v. Heasley* 98 Mich. 1. c. 307, the Michigan Court says:

"The relation between the members of this association is one of contract, and the Confession of Faith and the constitution constitute the terms of the agreement, which is binding upon all."

(a) And in such investigation of property rights the Courts will take and compare the two creeds, and award the property to the parties, whether in the majority or the minority, who have adhered to the doctrine and faith, which existed prior to the schism or division. *Krecker v. Shirley*, 163 Pa. St. 1. c. 551; *Burndage v. Deardorf* 55 Fed. 1. c. 846; *Bear v. Heasley*, 98 Mich. 279; *Lemp v. Raven*, 113 Mich. 375; *Deaderick v. Lamson*, 11 Hisk 1. c. 535; *Rodgers v. Burbett*, 108 Tenn. 1. c. 183; *Free Church of Scotland v. Lord Overton*, et al., Appeal Cases, 1904, p. 515.

In the *Brundage* case, *supra*, Judge Taft, says:

"The question is one of identity, and that identity is to be determined by a reference to the fundamental law of the church which was the original contract or compact under which its organization was effected, and in pursuance of which, and subject to which, all the property acquired for its use became vested in the church. An open flagrant, avowed violation of that original compact, by any persons theretofore members of the church, was necessarily a withdrawal from the lawful organization of the church, and the forfeiture of any rights to continued membership therein and to the control and enjoyment of the property conferred on such organization."

We shall not quote further under this proposition. Suffice it to say that in determining the question of whether or not property has been diverted from a trust it becomes necessary to show the identity

of the organization claiming the property with the organization existing when the trust was created. This identity is shown by the creed or Confession of Faith. In each of these cases cited *supra* the Courts did examine the creeds to determine the identity of the organization. No more thorough exposition of the Calvinistic doctrine can be found in the law books than in the discussion of the two creeds under review by the House of Lords in the Free Church of Scotland case, *supra*.

In the case of *McBridey, Porter*, 17 Iowa, 203, much relied upon by the respondents in this case, the Court examined the creeds of the two churches which had united and found them to be the same, and held for that reason the identity of the beneficiary had not been lost, by the mere change of name. But the Courts puts it on the ground that the two churches were "entertaining the same faith and doctrine." The italics are ours.

These observations as to the law indicate our purpose to go into all the questions in the case, and such is our purpose.

(d) There is yet another and further reason that civil Courts should investigate the jurisdiction of ecclesiastical Courts, even though they are going to accept proper decrees therefrom.

The idea is well expressed by the Michigan Court in the *Bear* case, *supra*.

"It has been expressly held by this Court that the provision of the Federal Constitution that full faith and credit shall be given in each state to the records and Judicial proceedings of every other state does not preclude an inquiry into the jurisdiction of Courts; and if, in fact, the subject matter of a suit was not within the jurisdiction of the state from which the Court derives its authority its judgment in a nullity, and may be so treated everywhere. *People v. Dawell*, 25 Mich. 247; *Wright v. Wright*, 24 Ind. 180; *McEwan v. Zimmer*, 38 Ind. 765."

It is useless for me to cite cases in Missouri that we will see that the foreign Court had jurisdiction before we give its judgment the full faith and credit required by the Federal Constitution. By what reason can it then be said that we shall blindly register the decrees of ecclesiastical bodies holding their Courts respectively in Illinois and Iowa.

II.

That there must be identity of doctrines and faith before a majority of a church organization can take the church property into another church is fully recognized by *McBride v. Potter*, 17 Iowa 203. That in case of a division in a church organization, that portion of the organization, whether the majority or the minority, which adheres to the existing creed, doctrines and faith at the time of the dispute, is entitled to the church property, is unquestioned law.

In the case at bar, even if civil Courts were bound to recognize and register the ecclesiastical decrees, which we deny, yet there has been no decree from either of these church Judicatories, saying that there was an identity of Confessions of Faith, doctrines, disciplines or church polity. The most that is said is "it is mutually recognized." Such agreement now exists between the systems of doctrine contain-

ed in the Confession of Faith in the two Churches as to warrant this union; a union honoring alike to both."

If this be the ecclesiastical judgment, and it is only one in the record upon the question, then there has never been an adjudication of the fact that there was identity in the two Confessions of Faith. There might be such a similarity of the confessions to warrant united action between the churches, and yet not such an identity as is required to pass trust property. The question as to whether or not these two Confessions of Faith are the same has never been adjudicated. In *Bear v. Heasley*, *supra*, Judge McCarth, speaking of an amended Confession of Faith against which the defendants were protesting, well said:

"It is urged however that the judgments of ecclesiastical tribunals in matters of faith and discipline and the general polity of the church are binding upon civil Courts. In the present case there has been no Judicial determination of any matter of faith or discipline or general polity adverse to defendants. As already suggested, there has been no adjudication that the Confession of Faith has not been changed."

So too in this case if the adoption of the resolution for a union of these two churches, is to be taken that the Cumberland Presbyterian Church, amended its whole Confession of Faith by adopting that of the Presbyterian Church U. S. A., then there is and has been no adjudication that such amendment did not change the original Confession of Faith. Therefore, even if we were disposed to make the decree of the church judicatory our decree, we have no decree upon the vital question to be adjudicated by this Court.

III.

Was there identity of church faith, discipline and polity?

Was there identity of the Confessions of Faith? We say not, and for two reasons. First, from the evidence before us nobody claims that there was, and, secondly, an examination of the documents themselves fails to so indicate. We shall consider in this paragraph the testimony (by way of written statements) of the parties themselves that there was no identity of the Confession of Faith.

With the report of the committees on Fraternity and Union there came to the Cumberland Presbyterian Assembly, a supplemental report, signed by William H. Black, for the Committee. I take it this was the action of the Cumberland Presbyterian half of the joint committee. This supplemental report urges many reasons for action in favor of union. This report concludes with this remarkable admission.

"Further, it is the opinion of your Committee that the doctrinal status as between the two Confessions of Faith favors it. There never can be a unanimity that is absolute, where many finite intelligences are concerned. We see things from different points of view with different degrees of emphasis, out of differing personalities and impelled by disparate motives; therefore it is to be expected that anyone who so desires can find objections in the statements of others; but brethren dwell together in unity, not by identity of beliefs, nor by the acceptance of absolutely unobjectionable doctrinal symbols, but by mutual tolerance, forbearance and love. If this union is consummated, the real tie which binds will not be in the

confessional symbol of the United Church, but the spirit of Christ in the hearts of the brethern."

Note the language, "but brethern dwell together in unity, not by identity of beliefs, nor by the acceptance of absolutely unobjectionable doctrinal symbols, but by mutual tolerance, forbearance and love."

This comes from the committee which for twelve long days considered the subject, and all they can say is "that the doctrinal status" favors union, but adds that such Union will be "not by identity of belief but by mutual tolerance, forbearance and love." Such identity is not sufficient to carry with it trust property.

By the report itself it is suggested, as in paragraph two of this opinion fully quoted, that "it is mutually recognized that such an agreement now exists between the system of doctrines contained in the Confessions of Faith as to warrant this union." Not a word said about the identity of the system of doctrine in the respective Confessions of Faith.

Further they say "it is also recognized that liberty of belief exists by virtue of the declaratory statement, etc."

Why suggest that there was liberty of belief if identity of doctrine and faith was to be procured by this union? It is further said that the ordination vows required of the ministers, ruling elders and deacons "requires the reception and adoption of the Confession of Faith, only as containing the system of doctrine taught in the Holy Scriptures." And in the Moffat resolutions passed by the Presbyterian Assembly and spread upon the minutes of the other Assembly it is said: "The ministers and ruling elders and deacons in expressing approval of the Westminster Confession of Faith as revised in 1903 are required to assent only to the system of doctrine contained therein, and not to every particular statement in it." In other words the officers of the church need not endorse what is contained in the Confession of Faith, unless they thought it was well founded in the Holy Book. But how about the unofficial members of the church, and the applicants for admission. No provision for these except to accept the Westminster Confession of Faith and the slight additions thereto, in toto. No regard for the conscientious scruples of such individuals, as we read this report. It would appear from this that we have a Confession of Faith that can be accepted in part by a class, but must be accepted as a whole by another class. We confess that we do not know whether this is usual or unusual, but we had thought that one who was a member of a church with a written Confession of Faith would be classed as heretical who taught or believed doctrines contrary to the Confession of Faith. Our theology may be lame, upon this proposition and we only here mention this matter as indicating that this joint Committee and these two churches fully recognized that there was not identity of doctrine and faith.

We are not prepared to say that our theology is lame, however. What is a Confession of Faith as applied to this or any other church? As we understand it, a Confession of Faith is simply the construction which a particular religious organization give to the Holy Book, and of this no one will speak with more reverence than the writer. Different views of the meaning of the Holy Word, have been the oc-

casion of denominational differences, and have forced the different denominations of the church. I dare say that neither layman nor theologian will deny that the churches generally expect their followers to entertain the peculiar construction of the Holy Book given in their respective Confessions of Faith. Such facts we gather from theology.

We do not mean that the Presbyterian Church, U. S. A., actually required the member to subscribe to an oath or an obligation that he or she believed in the construction placed upon the Holy Word in their Confession of Faith, but what we do mean is that this church and all other churches having a written Confession of Faith, expect their respective members to be in accord and sympathy with the construction of the Bible which has been placed thereon by the church authorities. Such has been the history of the Presbyterian Church U. S. A. As evidence thereof we have only to refer to the incident heretofore referred to as to the origin of the Cumberland Church. Not only did the Presbyterian Church, U. S. A., adhere in strictness to their Westminster Confession of Faith, as to doctrine, when they practically cut off the Cumberland Presbytery, but they adhered in all strictness to one of their rules as to the educational requirements for ordained ministers. But for the fact that the Presbyterian Church required, at that time a strict adherence to their doctrinal tenets, there would have been no Cumberland Presbyterian Church and we have seen nothing manifested (by constitutional edict) since that time to lead us to believe there has been a change of heart in the Presbyterian Church U. S. A., to demand less of its members than an adherence to their doctrinal tenets as found in the Confession. On the contrary if the rules and discipline of the Church mean anything, they mean that the members of the church, both children and adults, are to be taught from the Catechisms, which in doctrine have never been changed from the days of Calvin, and can't be changed except by the action of the Presbyteries. In other words, if I have children in the Presbyterian Church, U. S. A., whether voluntarily or involuntarily, the discipline of the church requires that they be taught this doctrine. To close, why found a church upon this construction of Holy Writ, and yet say the members are to be in good standing, if they deny the central thought of the doctrine? The statement of the question answers it, in the minds of thinking persons. If the church has changed its original position then by constitutional amendments both to the Confession of Faith and the Catechisms, that change of mind can be evidenced, but it cannot be done by mere declaratory statement, which leaves all the text of the Confession of Faith in full force, and does not even mention the Catechisms, the remaining doctrinal standards of the church. No attempt to change all the doctrinal standards, yet the alleged union was on the basis not only of the Confession of Faith of the Presbyterian Church, U. S. A., but upon that "and the other doctrinal standards," a part of which are the unchanged books of Catechism, which they teach from and which remain as they have heertofore been.

Now let us take the Presbyterian side of the question and get their views of the identity. When the General Assembly voted upon and adopted the plan of union reported by the joint committee it passed a resolution making it clear what effect that church thought

the revision of 1903 had upon the Westminster Confession of Faith. Section 4 reads:

"That the Assembly, in connection with this whole subject of union with the Cumberland Presbyterian Church, places on record its judgment, that the revision of the Confession of Faith effected in 1903 has not impaired the integrity of the system of doctrine contained in the confession and taught in Holy Scripture but was designed to remove misapprehensions as to the proper interpretation thereof." If the revision of 1903 "has not impaired the integrity of the system of doctrine" in their Confession of Faith, which was the Westminster Confession of Faith, then by the declaration of the Presbyterian Assembly itself, the Westminster Confession of Faith stands unimpaired with all its doctrines of futility in full force. If it has not been impaired it remains unimpaired—unchanged.

The representatives appointed by the Presbyterian Church on the joint Committee made a report to their church, when they presented the joint report upon union. In this report, among other things, it was said that at the outset certain things were made plain to the Cumberland brethren of the Committee, and among these things made plain was this: "and that the revision of the Confession of Faith had effected no material change in the doctrinal attitude of the Church." That doctrinal attitude prior to 1903 was the Westminster Confession of Faith and this had not been materially changed.

This Committee further says:

"The language used in the first paragraph of Concurrent Declaration No. 1, declaring that, such agreement now exists between the systems of doctrine contained in the Confession of Faith of the two churches as to warrant this union—a union honoring alike to both, was primarily the language of that committee (Meaning the Cumberland Committee.) It is to be interpreted in the light of the fact that preceding it the statement is found that the Cumberland Presbyterian Church is to adopt the Confession of Faith of the Presbyterian Church in the U. S. A. Whatever the difference between the churches have been, and there have been decided differences, these brethren must be regarded as giving expression to the sincere conviction that such a doctrinal agreement now exists between the churches as to warrant their adopting our confession as interpreted by the Declaratory Statement. Your Committee likewise appreciated the power of this presentation made by the brethren of the other committee, and while the language of Declaration No. 1 was not satisfactory to them or to us, an effort was made to secure a different phraseology, it was felt by all that some cordial acknowledgement of a sufficient, doctrinal agreement to warrant union should union be deemed advisable, was due to a church, which it is proposed by both committee should yield its name, adopt our standards as an entirety, and find complete union with us."

If there could be a clearer admission that the parties considering the question did not think there was substantial identity, we misinterpret the language of these distinguished theologians. Not only were they not satisfied that there was identity of faith and doctrine, but what they did agree upon was satisfactory to neither, but this committee felt there should be "some cordial acknowledgement of a

sufficient doctrinal agreement to warrant union."

No concession here that there were two churches with the same faith, but there would if the Cumberland Presbyterians would "adopt our standard as an entirety, and find complete union with us."

Referring to the differences in church polity as to the selection of negroes as commissioners to the General Assembly and not maintaining separate Presbyteries and Synods for them, a thing not tolerated by the Cumberland Presbyterians, this committee said:

"The committee in all its negotiations stood firm upon the Scriptural principles of the real unity of the household of faith and the equality of all its members," and they close with these remarks. "If this General Assembly and the Cumberland Presbyterian General Assembly cannot see their way clear to acknowledge a sufficient agreement in doctrine between the two churches to warrant the Union, and if this assembly and church feel unable to provide in a constitutional manner for the existence of more than one Presbytery on the same ground, then it is respectfully submitted that the proper course to pursue would be to recommit the Plan of Union with a view to further and modified action."

In 1907 the General Assembly of the Cumberland Presbyterian Church sent a communication to the General Assembly of the Presbyterian Church, U. S. A., to which reply was made. In this reply we find this language:

"We had not heard, until your communication announced it, that anybody had claimed or induced others to believe that the Presbyterian Church in the U. S. A., had abandoned the Westminster Confession of Faith. This is not true. The fact is in easy view of all, and nobody could have obscured it, if it had been attempted, that the Reunion was effected upon the doctrinal basis of the Westminster Confession of Faith as revised in 1903 and the other doctrinal standards of the Presbyterian Church in the U. S. A." The answer then reiterated the often repeated phrase that the churches in adopting the plan of reunion "declared that there was sufficient agreement between the systems of doctrine of the churches to warrant this union, etc."

This record evidence, which speaks louder than words, shows that the Presbyterian Church U. S. A., is holding on with tenacity to the system of doctrine promulgated at Westminster. After the Union that church through its General Assembly boldly announces that if anybody claimed or induced others to believe that it had abandoned the Westminster Confession of Faith such was not true. Note the language above, "This is not true."

But why multiply words with these admissions from both sides. As between the two Confessions of Faith, no one claims that there was even substantial identity. From the record it appears that the Presbyterian Church, U. S. A., was taking legal advice, and this advice was to the effect if the union was made it must be upon the basis that all the standards of the new church should be the doctrines and standards of the Presbyterian Church U. S. A., and that the name of the Presbyterian Church, U. S. A., must be retained. Their church had large holdings of property in trust. These lawyers realized that this property might be lost if the doctrines of that church were impaired in the slightest, and they would not even per-

mit a change of name. Their idea was to preserve absolute identity throughout. Not mere identity of faith, doctrines and standards, but name as well. They were not willing to stand upon *McBride v. Porter*, 17 Iowa, 203, so often cited in respondent's brief, which held that if there was identity of doctrinal standards, a new name would not destroy the identity of the church. We are not criticising these lawyers, for they gave good legal advice. Nor are we criticising the church for seeking advice, because their vast interests demanded it, and their officers would have been derelict in duty had they failed to seek proper legal advice. But we dare say that the advice then given was far from what is now urged in this Court. In our statement we refer to the use of the words union and reunion in the submission of the question. We were impressed with the notion when reading the record that the able counsel who ever they were, in advising how the plan should be submitted had likewise suggested the use of both words as a better means of safeguarding the property rights of their clients and hence our statement that the reason for the use of the two words appeared only in the shadows of the background. But we repeat that this was proper legal advice, and the church was right in seeking it.

But all this goes to show that at no place throughout the proceedings did these two churches consider that there was even substantial identity of doctrines and standards. "Sufficient agreement of doctrine for union" is an uncertain and intangible thing. What one person would say was a sufficient agreement might not be so considered by another. Then the character of united action must be considered. In the broad sense of the mere saving of souls there is sufficient agreement of doctrines for all churches to unite upon. Identity of faiths, doctrines and standards, described merely as "sufficient agreement to warrant this union" is not that identity, which the law demands, when determining the rights of parties to trust property.

We conclude this paragraph by saying that the evidence of the parties themselves does not show that they considered there was identity of doctrines such as the law demands.

IV.

Now going a step further let us take up the two doctrines themselves and compare them. We shall not go elaborately into them, but far enough to illustrate that there is not identity of doctrine in the two Confessions of Faith. For a better exposition of them we refer the inquiring mind to the able and learned opinion of Neil, J., of the Tennessee Supreme Court, in case of *Landrith et al., v. Hudgins, et al.*, (120 S. W. 783)

To shorten expression, we shall speak of one church as the Presbyterian and the other as the *Cumberlands*. Under the head of "God's Eternal Decree" the Presbyterians in their Confession of Faith, say:

Presbyterian Church in the United
States of America.

CONFESSION OF FAITH.

CHAPTER III.

OF GOD'S ETERNAL DECREE.

III. By the decree of God, for the manifestation of His glory, some men and angels are predestined unto everlasting life, and others fore-ordained to everlasting death.

IV. These angels and men, thus predestined and fore-ordained, are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished.

V. Those of mankind that are predestined unto life, God, before the foundation of the world was laid according to His eternal and immutable purpose, and the secret counsel and good pleasure of His will, hath chosen in Christ, unto everlasting glory, out of His mere free grace and love, without any foresight of faith or good works, or perseverance in either of them, or any other thing in the creature, as conditions or causes moving Him thereunto; and all to the praise of His glorious grace.

VI. As God hath appointed the elect unto glory, so hath He, by the eternal and most free purpose of His will, fore-ordained all the means thereunto. Wherefore they who are elected, being fallen in Adam, are redeemed by Christ, are effectually called unto faith in

Cumberland Presbyterian Church.

CONFESSION OF FAITH.

DECREES OF GOD.

8. God, for the manifestation of His glory and goodness, by the most wise and holy counsel of His own will, freely and unchangeably ordained or determined what He himself would do, what He would require His intelligent creatures to do, and what should be the awards respectively of the obedient and the disobedient.

9. Though all divine decrees may not be revealed to men, yet it is certain that God has decreed nothing contrary to His revealed will or written Word.

Christ by His spirit working in due season; are justified, adopted sanctified and kept by His power through faith unto salvation. Neither are any other redeemed by Christ, **effectually called**, adopted, justified, sanctified and saved **but the elect only**.

VII. The rest of mankind, God was pleased, according to the unsearchable counsel of His own will, whereby He extendeth or withholdeth mercy as He pleaseth, for the glory of His sovereign power over His creatures, to pass by, and to ordain them to dishonor and wrath for their sin, to the praise of His glorious justice.

FREE WILL.

34. God, in creating man in His own likeness, endued him with intelligence, sensibility and will, which form the basis of moral character, and renders man capable of moral government.

35. The freedom of the will is a fact of human consciousness and is the sole ground of human accountability. Man in his estate of innocence, was both free and able to keep the Divine law, also to violate it. Without any constraint, from either physical or moral causes he did violate it.

CHAPTER X.

OF EFFECTIVE CALLING.

III. **Elect infants**, dying in infancy, are regenerated and saved by Christ through the Spirit, who worketh when, and where, and how He pleaseth. So also are all elect persons, who are incapable of being outwardly called by the ministry of the Word.

IV. **Others, not elected**, although they May be called by the ministry of the Word, and may have some common operations of the Spirit, yet they never truly come to Christ, and therefore cannot be saved; * *

DIVINE INFLUENCE.

38. God, the Father, having set forth His son, Jesus Christ, as a propitiation for the sins of the world, does most graciously vouchsafe a manifestation of the Holy Spirit with the same intent to every man.

REGENERATION.

51. Those who believe in the Lord Jesus Christ are regenerated, or born from above, renewed in spirit, and made new creatures in Christ.

54. All infants dying in infancy, and all persons who have never had the faculty of reason, are regenerated and saved.

The General Assembly of the Presbyterian Church in 1903 adopted what they call a "Declaratory Statement" with reference to Chapters 3 of their Confession of Faith, from which chapter, Sections 3 to 7, quoted above, are taken. The Declaratory Statement thus reads:

"First: With reference to Chapter 3 of the Confession of Faith. That concerning those who are saved in Christ, the doctrine of God's eternal decree is held in harmony with the doctrine of His love to all mankind, His gift of His son to be the propitiation for the sins of the whole world, and His readiness to bestow His saving grace on all who seek it. That concerning those who perish, the doctrine of God's eternal decree is held in harmony with the doctrine that God desires not the death of any sinner; but has provided in Christ a salvation sufficient for all, adapted to all, and freely offered in the Gospel to all; that men are fully responsible for their treatment of God's gracious offer; that His decree hinders no man from accepting that offer; and that no man is condemned except on the ground of his sin."

We have some views of our own on this Declaratory Statement but that we may not be said to express only worldly views, we quote a few lines from the late eminent Presbyterian preacher and teacher Rev. Benjamin B. Warfield, D. D., L. L. D., of Princeton Theological Seminary. Writing upon the subject of "The Confession of Faith as revised in 1903" in the *Union Seminary Magazine*, Richmond, Va., Vol 16, No. 1, he says, among other things as follows:

"The Declaratory Statement is not a 'revision' of the text of the confession, nor an 'addition' to the text of the confession; it is only an 'explanation' of the text of the confession. The text itself it leaves intact, and not only leaves the text intact, it reaffirms that text. What it sets itself to do, in fact, is to protect this text from false inferences and to strengthen it by application. That this is the real state of the case will be apparent if we give attention to the terms of the Preamble by which the Declaratory Statement is introduced. . . . This doctrine it declares, we observe, 'is held.' It is not repudiated; it not modified; it is not qualified; it is not in any way weakened or diluted; it simply 'is held.' Reaffirmation could not be more explicit."

In our humble judgment, Dr. Warfield is not far from right. Had he gone further and examined Chapter XXIV of the "Form of Government" of the Presbyterian Church, which chapter pertains to amendments, he would have found that it is neither an amendment in law or fact. Such a document finds no Constitutional support under the constitution of his church. Nor does the instrument itself purport to be a legislative act amending or changing the text. It affirms that everything in the sections we have quoted is correct,

but that they further hold said statements are in harmony with certain other named doctrines. But even giving it the status of an amendment, it leaves the sections we have quoted as fully in force and effect as the day they were adopted in the Westminster Conference. In other words the effect, considered as an amendment is that all of the old sections are right, and are harmonious with the other things stated. That the two doctrines are in harmony we are wholly unable to see. If it is meant by this instrument that they want the Court to say that the original sections do not teach, that some men were damned from the beginning by the decree of God and that some others were saved by the same decree, from the same date we will not so say. The language of these sections is in plain English, and the Court is presumed to be able to understand English, whether it appears in a contract or a confession of Faith. Confessions of Faith to be read and understood by the masses, the ignorant as well as the highly educated, are presumed to be in plain terms and we presume they generally are in plain terms. At least this one is in plain terms. It is not claimed that these sections do not form a part of the Confession of Faith, or that a letter or syllable therein has been changed. The preamble says that the Declaratory Statements was for the purpose of "a disavowal by the church of certain inferences drawn from statements in the Confession of Faith." What these inferences were we are left to gather from what follows. But this is immaterial. It is evident that these sections are left, and are unimpaired as Dr. Warfield says, and as the Church itself said in the Assembly of 1907.

We cannot say that there is identity of doctrine between these sections, and the two sections quoted from the other Confession of Faith. They are diametrically opposed to each other.

But going to another matter. When the committee was appointed to prepare this identical Declaratory Statement it received instructions from the General Assembly thus: "It being understood that the revision shall in no way impair the integrity of the system of doctrines set forth in our Confession and taught in the Holy Scriptures."

Thus they were charged in advance to in no way impair the Westminster Confession of Faith, and we think they have obeyed instructions.

Remembering that the union was effected "on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards" let us now go to a portion of such standards, about which there is no claim of wrong inference having been drawn, and which have not been either explained or modified by Declaratory Statement or otherwise. The Catechisms contain the doctrines actually and daily taught. These Catechisms cannot be changed, except by amendment, approved by two-thirds of the Presbyteries in the Presbyterian Church, Chapter XXIV, Section 3 of Presbyterian Form of Government. No pretense that these have been amended. Let us therefore compare the doctrinal tenets of the two Churches from these standards for they are the standards from which they teach, both the young and the old.

Below in parallel columns we set out material portions of the two Confessions of Faith:

Presbyterian U. S. A.

The Larger Catechism.

Q. 12. What are the decrees of God?

A. God's decrees are the wise, free and holy acts of the counsel of His will, whereby **from all eternity**, He hath, for His own glory, **unchangeably fore-ordained whatsoever comes to pass in time**, especially concerning angels and men.

Q. 13 What hath God especially decreed concerning angels and men?

A. God, by an eternal and immutable decree, out of His mere love, for the praise of His glorious grace, to be manifested in due time, hath **elected some angels to glory**; and in Christ hath **chosen some men to eternal life**, and the means thereof; and also, according to His sovereign power, and the unsearchable counsel of His own will (whereby He extendeth or withholdeth favor as He pleaseth), hath **passed by, and fore-ordained the rest to dishonor and wrath**, to be for their sin inflicted, to the praise of the glory of His justice.

Q. 67. What is effectual calling?

A. **Effectual calling** is the Work of God's almighty power and grace, whereby (out of His free and especial love to His elect, and from nothing in them moving Him thereunto) He doth in His accepted time invite and draw them to Jesus Christ, by His word and Spirit, savingly enlightening their minds, renewing and powerfully determining their wills, so as they (although in themselves dead in sin) are hereby made will-

Cumberland Presbyterian.

Q. 7. What are the decrees of God?

The decrees of God are His wise and holy purposes to do what shall for His glory. Sin not being for His glory, therefore, He has not decreed it.

ing and able, freely to answer His call, and to accept and embrace the grace offered and conveyed therein.

Q. 68. Are the elect only effectually called?

A. **All the elect, and they only, are effectually called;** although others may be and often are outwardly called by the ministry of the Word, and have some common operation of the Spirit; who, for their wilful neglect and contempt of the grace offered to them, being justly left in their unbelief, do never truly come to Jesus Christ.

The Shorter Catechism.

Q. 19. What is the misery of that estate whereinto man fell?

A. All mankind, by their fall, lost communion with God, are under His wrath and curse, and so made liable to all the miseries of this life, to death itself, and to the pains of hell forever.

Q. 20. Did God leave all mankind to perish in the estate of sin and misery?

A. God, having out of His mere good pleasure, **from all eternity, elected some** to everlasting life, did enter into a covenant of grace, to deliver them out of the estate of sin and misery, and to bring them into an estate of salvation by a Redeemer.

Q. 21. Who is the Redeemer of God's elect?

A. The only Redeemer of God's elect is the Lord Jesus Christ, who being the eternal son of God, became man and so was and continueth to be God and Man, in two distinct natures and one person forever.

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21. What are the evils of that estate into which mankind fell?

Mankind, in consequence of the fall, have no communion with God, discern not spiritual things, prefer sin to holiness, suffer from the fear of death and remorse of conscience, and from the apprehension of future punishment.

22. Did God leave mankind to perish in this estate?

No; God, out of His mere good pleasure and love, **did provide salvation for all mankind.**

23. How did God provide salvation for mankind?

By giving His Son, who became man, and so was and continues to be, both God and man in one person, to be a propitiation for the sins of the world.

Page after page might be taken up but it is useless. From these catechisms, the people are taught the doctrinal theories of the churches. Some churches go so far as not to confirm the member until they have been fully studied and memorized. If the Presbyterian Church today is complying with the disciplines of their Church, and teaching from these Catechisms, either larger or short, they are teaching Calvinism in its purity. We are to presume that, as faithful Christians, as they are, they are not remiss in this regard. But be that as it may, these quotations are of their standard of doctrines and faith. Had that Church desired to depart from them under their Constitution, they should have ben stricken out by amendment.

So too had it been the purpose to depart from the old Westminster Confession of Faith, they would have stricken out by way of amendment that part relating to the Decrees of God, which teach fatalism in terms too concise and plain to require argument here.

The position of the Cumberland Presbyterian Church is well stated by the following excerpts from Blake's Old Log House, pp. 267 to 270:

"The Cumberland Presbyterian Church claims to occupy what it denominates the 'MEDIUM SYSTEM OF THEOLOGY' a middle ground between Calvinism and Arminianism. The two latter systems (Colvinism and Arminianism) as we all know, are regarded as the extreme of theology. It is claimed by the advocates of the systems that there is no medium ground; that everyone must either be a Calvinist or an Arminian in his religious belief or else he is nothing; but such an assertion, when analyzed, is absurd—might as well say there is no territory between the north and south pole, or that there is no space between the extreme ends of a platform: How could these two systems be the extremes of theology without having this intermediate area, this medium ground?

But let use examine these systems (Calvinism and Arminianism) and see if there is not a theological medium ground.

1. The Doctrine of Election—Calvinism teaches that election is unconditional. Arminianism teaches that there is no election in this life. Medium system teaches that there is an election, but that it is conditional.

2. The Doctrine of Salvation—Calvinism teaches that salvation is unconditional to sinners, but certain to Christians. Arminianism teaches that salvation is conditional to sinners but uncertain to Christians. Medium system teaches that salvation is conditional to sinners but certain to Christians.

3. The date of Election.—Calvinism teaches that the date of election is before man was created. Arminianism teaches that the date of election is not prior to the death of the Christian, if indeed, it occurs then. Medium system teaches that the date of election is the moment when the sinner is regenerated.

4. The Extent of the Atonement.—Calvinism teaches that Christ died for only a part of the human race—that salvation is not possible to all, and that none but those who were 'elected from the foundation of the world,' will be saved. Arminianism teaches that the atonement of Christ was made for all mankind that salvation is possible to all; but, as Christians may fall from grace, it is not cer-

tain that anyone will be saved. Medium system salvation is possible to all, and that every one who has been truly regenerated will be saved.

5. The Perseverance of the Saints.—Calvinism teaches that perseverance depends principally upon the immutability of the decree of unconditional election. Arminianism teaches that perseverance depends, not upon the immutability of the decree of unconditional election nor upon the good works of the creature, but upon the love of God, the merits of Christ, the abiding of the Spirit and the covenant of Grace."

At the first meeting of the first Cumberland Presbyterian Synod there was promulgated the following:

"1. That there are no eternal reprobates.

2. That Christ died, not for a part only, but for all mankind.

3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.

4. That the Spirit of God operates on the world, or as coextensively as Christ has made atonement, in such a manner as to leave all men inexcusable."

Such is found implanted in every line of their subsequently made Confessions of Faith. Such was there at the time of this union and such is there both in spirit and letter at this time.

We cannot hold that there is substantial identity between these two Confessions of Faith.

To so say would be but to call from the grave the earnest protests of such venerable fathers in Israel as Ewing, McAdow, King, Calhoun, Donnell, Morrow, Buie, Burrow, Sloan, Patton, Rennick and others who, from the beginning framed and fostered the spirit of Cumberland Presbyterianism both in the East and West, and some of whom are buried beneath the sod in Missouri.

We, therefore, hold that the parties leaving the Cumberland Presbyterian Church and going into the Presbyterian Church, U. S. A., are dissenters from the Cumberland Presbyterian doctrines and faith, and it matters not whether they be in the majority or minority, they are in no position to claim property conveyed and held in trust for the Cumberland Presbyterian Church. This statement is here made subject to the views we have as to the legality of the proceedings for Union, which follow.

V.

We do not decide that the Cumberland Presbyterian Church could not amend its Confession of Faith by striking out portions thereof, or adding portions thereto. Under their constitution this can be done, for section 60 of their Constitution reads:

"Upon the recommendation of the General Assembly at a stated meeting, by a two-thirds vote of the members thereof, voting thereon, the Confession of Faith, Catechism, Constitution and Rules of Discipline, may be amended or changed, when a majority of the Presbyteries, upon the same being transmitted for their action, shall approve thereof."

We have set out what was submitted to the Presbyteries to be voted upon. The question there submitted was the question of union, not the question of amending the Cumberland Presbyterian Confession of Faith. We have read this voluminous record, contain-

ing the proceedings of both Assemblies upon the question of union, and no word is found therein showing that they considered for a moment an amendment of the Cumberland Confession of faith. Not an amendment was suggested by the General Assembly of the Cumberland Presbyterian Church, nor was one voted by the Presbyteries. The question of amending this Confession of Faith is never mentioned, and it remains in full tact today.

For the present, grant it that two churches having like creeds and doctrines can unite, and by such union, because of the identity of doctrine, carry to the union the property held in trust both, yet that does reach this case. Here we have two churches of different doctrines and faiths attempting to unite without changing by amendment the Confession of Faith of either. In the language of Judge Neil in *Landrith et al., v. Hudgins, et al.*, supra, "The union must be effected in strict accord with the constitution. That is if it requires a preliminary change of faith and of name and these changes can only be made by amendment, then such amendment must precede the actual union, and must be made in the manner pointed out in the contract. The principle is that as far as the method is distinctly pointed out it should be pursued."

The Constitution is the Contract of Association in churches and all unincorporated societies. It is binding upon all portions of the church as well as the Judicatories thereof. It is the Supreme law of the church and must be adhered to by every part thereof. To pass upon the meaning of such instrument is not dealing with ecclesiastical questions at all, but only determining the meaning of an organic agreement or contract. That these organizations can not go beyond their constitutional powers is amply shown by the cases. *Watson v. Garvin*, 54 Mo. 379; *Watson v. Avery*, 2 Bush. 332; *Bear v. Heasley*, 98 Mich. 279. *Bunn v. Gorgar*, 41 Pa. St. 446; *Krecker v. Shirey*, 163 Pa. St. 97; *Deaderick v. Lampson*, 11 Heisk. 523, *Presbyterian Church v. Wilson*, 14 Bush. 278.

In fact this contention is admitted in the case of *Wallace v. Hughes*, of the Kentuck Court of Appeals, which we will mention later as one of the cases growing out of this particular union. Other cases might be cited, but we take it that it is clear that whenever the church has a written Constitution, such constitution is the contract between the members and all are bound thereby.

The only way, under section 60, supra, by which the General Assembly of the Cumberland Presbyterian Church could change the name of that organization or change its doctrines or faith, was by proper amendments offered as to their own Confession Faith and organic law. It has no inherent power to wipe out the name Cumberland Presbyterian Church, until by a two-thirds vote of the Assembly, it has asked its Presbyteries, by way of a proposed amendment, whether or not they will so permit. The parties had thought along this line, for in their plan for union which was adopted, the first provision was:

"The Presbyterian Church in the United States of America whose General Assembly met in Immanuel Church, Los Angeles, Cal. May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Presbyterian Church

Nashville, Tenn., May 21st, 1903, shall be united as one Church, under the name and style of The Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate Churches now possess."

Even if it could be said that if this had been submitted it would have the effect of an amendment to the Cumberland Presbyterian Constitution so as to change the name of that Church, yet this section one was never submitted to and voted upon by the Presbyteries of that church.

Judge Neil, in the Tennessee case, has so forcibly presented this point that we use his language rather than our own. He says:

"The first subdivision of the plan which involved a surrender of the name and organization of the Cumberland Presbyterian Church was not submitted to the Presbyteries; but was left to be determined and was determined by the General Assemblies of the two Churches; or rather by the General Assembly of the Cumberland Presbyterian Church. The question did not arise in the Presbyterian Church U. S. A., because under the Plan of Union that Church was to retain both its name and organization.

Did the General Assembly of the Cumberland Presbyterian Church, without submitting the matter to the Presbyteries, have the power to surrender the name and organization of the Church, and dissolve it, by consenting to its absorption into another organization? The view entertained by the Two General Assemblies, it seems, from the recitals and resolutions contained in the Joint Report, was that it was not necessary to submit the General Plan to the Presbyteries, or rather, that by submitting the question whether the Union should be made on the basis of the Confession of Faith of the Presbyterian Church, U. S. A., as revised 1903, the whole plan was submitted. Indeed, from a letter which the Moderator and Stated Clerk of the Cumberland Presbyterian General Assembly wrote to the Presbyteries, it appears that they signified to these bodies that their vote on these questions would mean the acceptance or rejection of the whole Plan?" It is provided in the Plan of Union that each of the Assemblies shall submit the basis of union to its Presbyteries, to express their approval or disapproval, by a categorical answer to this question, setting forth doctrinal question copied herein, concerning the adoption of the Confession of Faith of the Presbyterian Church U. S. A. That is, while the plan consisted of two distinct parts—the matter of doctrine, and the matter of dissolving the organization of the Cumberland Presbyterian Church and its absorption into the Presbyterian Church, U. S. A., only the question of doctrine was ordered to be submitted to the Presbyteries, and their answer to this was to be regarded, according to the Plan, as an answer to the other; in other words only a part of the Plan was to be submitted to the according to Presbyteries, but this submission was to be regarded, the plan, as an answer to the other; in other words only a part of the Plan was to be submitted to the Presbyteries, but this submission was to be regarded as a submission of the whole. So, passing the statement above quoted from the letter of the Moderator and the Stated Clerk to the Presbyteries as to what the effect of their vote would be as expressing merely their opinion, which of course was not binding upon the Presbyteries, or upon the Court, because it

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does not appear that they had any authority to make such statement, but were merely required by the resolution of the Assembly to submit the basis of Union to the Presbyteries, and also because the question is one for this Court to determine,—we must consider the question as one arising upon the basis of Union itself, whether the submission of the single question referred to, (the doctrinal basis,) was also a submission of the other, concerning the surrender of the name of the Church, and the breaking up and dissolution of its organizations. The question asked the Presbyteries was: "Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testament shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice?" Was that equivalent to asking the Presbyteries to vote upon the proposition involved in the first section of the Plan, that the Cumberland Presbyterian Church should surrender its name and organization, and be incorporated into the body of the Presbyterian Church in the United States of America, and under the name of the latter? Does the submission of the question, 'Are you willing to effect a union upon a certain doctrinal basis?') also submit the question, 'Are you willing that the Cumberland Presbyterian Church shall abandon its name and organization and be merged into the Presbyterian Church, U. S. A.' We think not. Perhaps this might be true as a necessary implication, if merger were the only form of union, but it is by no means the only form. At all events the people of the church were entitled to have the whole question submitted to the Presbyteries. We do not think that the General Assembly had power to determine this question without a submission to the Presbyteries. There is nothing in any part of the constitution of the Church which confers this power upon the Assembly, and by section 25 that body is denied all powers not expressly conferred."

The General Assembly of the Cumberland Presbyterian Church in 1906, by its action undertook to surrender not only the creed and doctrines of its church, but likewise to surrender its name, organization and property and this without a vote of the Presbyteries. This cannot be done under the Cumberland Constitution. The act was *ultra vires* and void.

VI.

But to our mind there is another phase of this case to be emphasized. We are firmly of the opinion that there was no power in the General Assembly of the Cumberland Presbyterian Church to submit the question of union. In this view we are opposed to some of the cases growing out of the controversy now before us. Section 43 of the Constitution reads,

"43. The General Assembly shall have power to receive and decide all appeals, references and complaints regularly brought before it from the inferior Courts; to bear testimony against error in

doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline; to give its advice and instruction, in conformity with the Government of the Church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior Courts observe the Government of the Church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide or dissolve, Synods; to institute and superintend the agencies necessary in the general work of the Church, to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this Church, to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of those Courts, and lying within their geographical bounds respectively; to superintend the affairs of the Whole Church; to correspond with other Churches; and, in general, to recommend measures for the promotion of charity, truth and holiness throughout all the Churches under its care."

It will be noticed that there are but two provisions herein that relate to changing the Church status, we mean by that the Church as a whole. First, it says, "to concert measures for promoting the prosperity and enlargement of the church," and, secondly, "to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrines and order of this church.

Then follows the clause that they can authorize synods to do the same things:

It is hardly necessary to say the word Church in these clauses quoted has reference to the Cumberland Presbyterian Church, and and none other.

In this light does the enlargement of the Cumberland Presbyterian Church as spoken of in the first quoted clause, mean the absolute surrender of the name and creed of the Church? To my mind it means to enlarge the Cumberland Presbyterian Church organization itself, and not to destroy or surrender it. This construction receives sanction in the second clause quoted, because it there provides one method of enlargement and that is to "receive" unto itself other organizations of like creed and faith. These powers, when fairly construed, mean (1) that by work in different ways they shall strive to secure individual members to join and thus enlarge the church, and (2) to receive other bodies of a similar faith, creed and government. Neither of these contemplate the merger of the church into another organization. The constitution has dealt with the manner of enlarging the church, and in a manner which does not indicate that there should be a surrender of the church organization, the church name or the creed. Authority to "receive" unto itself does not mean to go to another body. The written instrument having mentioned the specific way by which mergers or unions can be formed with the church, i. e. by receiving other bodies under its jurisdiction,

excludes the idea of enlargement by such church going in under another organization.

The maxim '*inclusio unius, exclusio alterius*' has peculiar application here. There is express provision for the consolidation of this church with other churches, but that provision is for the other to so amend its creeds, doctrines and form of government as to make them conform to that of the Cumberland Presbyterian, and then come in under the jurisdiction of the Cumberland Presbyterian Church. Had the constitution been silent upon the question as to how the Cumberland Church should unite with other churches, there might be something in what respondents call the inherent power to unite. If the written Constitution prescribes a method for union, and this constitution does, that method and none other should be followed. Any other method would be *ultra vires*. When they dealt with the question of merger or union, as they did, then the method adopted excludes the idea of any other. This Constitutional method was 'to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church.'

The constitution provides for a Union in express terms, but the one sought and attempted to be consummated was not such as is prescribed by the Constitution. It was violative of the Constitution and therefore void.

The sovereign power rests with the Church as a whole and the several Judicatories beginning with the Church Session and ending with the Assembly are but agencies of the church with granted powers which are expressly limited by section 25 of the Constitution. The General Assembly is not the Church, neither is any other minor Judiciary. They are but the Constitutional agents of the Church, and whilst they can amend the Constitution as well as the creed, yet until it is amended in strict compliance with the limiting terms of such constitution, the existing organic law is binding alike upon the General Assembly and the humblest member. So that we say that the attempted method of Union was in direct violation of the Constitution and void. In other words until the church has amended Section 43 of its Constitution it cannot form a union with any other ecclesiastical body, except to receive such other body under its own jurisdiction.

VII.

We do not feel that we should pass this case without some little comment upon the cases which have grown out of this controversy and the case much relied upon by respondents, i. e. *Watson vs. Jones*, 13 Wallace, 729. This last named case, in so far as it holds that civil Courts will not look into the judgments of ecclesiastical courts has been condemned in terms by the Supreme Courts of Missouri, Kentucky, Michigan and New York, and sharply distinguished if not criticised by Taft, J., in the *Brundage Deardoff* case, *supra*. In the *Brundage* case (however, the U. S. Court of Appeals, 92 Feb. 214 said that they felt bound by that decision. But as we have shown the great weight of authority is that civil Courts will investigate ec-

ecclesiastical judgments in all cases wherein property rights are concerned.

In Schnorrs Appeal, 67 Penn. St. 138 Justice Sharswood uses this forceful language:

"Courts which have the supervision and control of all corporations and unincorporated societies or associations must be guided by surer and clearer principles than those to be derived from the nature of intellectual and spiritual life. The guaranty of religious freedom has nothing to do with the property. It does not guarantee freedom to steal churches. It secures to individuals the right of withdrawing, forming a new society, with such creed and government as they please, raising from their own means another fund, and building another house of worship; but it does not confer upon them the right of taking the property consecrated to other uses by those who may now be sleeping in their graves. The law of intellectual and spiritual life is not the highest law, but must yield to the law of the land."

In Fussell vs. Hail, a case growing out of this particular union, the Illinois Supreme Court said:

"The civil Courts afford no remedy for an abuse of ecclesiastical authority which **does not violate a civil or property right**. Church tribunals ought to perform their functions honestly, impartially and justly, with due regard to their constitutional powers, sound morals, and the rights of all who are interested; but if tyranny, force, fraud, oppression or corruption prevails, no civil remedy exists for such abuse **except where it trenches upon some property or civil right.**"

This, the Fussell case, is the first of the series of cases growing out of this union. The bill was one in chancery, the object of which was to prevent the two bodies from declaring a union. In other words they sought to stop the two bodies from acting. The Supreme Court sustained the action of the lower court in sustaining a demurrer to the bill in this language.

"There is no allegation setting forth any deed, devise, declaration of trust or gift of any property, or any clause therein or the terms thereof, whereby it can be seen that the proposed union would defeat its purpose. There is no statement whereby it appears that the complainants, or any of those they represent, have an interest in property which will be in any way affected by the proposed union. It is not alleged that any action is proposed to be taken which will interfere with the management and control of the property of the various churches, boards, schools and other institutions of the Cumberland Presbyterian Church by the boards of trustees or other managers now in control, thereof, and of their successors appointed in accordance with the trusts upon which they are held. We do not find that any property right is directly involved or can be directly affected by the proposed action of the general assembly which it is sought to enjoin.

This proposed action was still pending in the general assembly undetermined, when the bill was filed. It may well be doubted whether the proceedings of an ecclesiastical body can in any event be controlled by injunction while the matter is still in fieri. But without regard to this question, the case stated in the bill was not

within the jurisdiction of a court of chancery and the demurrer to the bill was therefore properly sustained."

It thus appears that the Supreme Court of Illinois clearly indicates that had there been allegations of property rights an investigation should have been made by the Civil Courts. It so indicates throughout the entire opinion, and in this is opposed to what respondents say was the ruling in *Watson vs. Jones*, *supra*.

The Illinois Court of Appeals had sustained the action of the lower Court upon other grounds, holding among other things that under the Cumberland Presbyterian Constitution giving it power "to promote the prosperity and enlargement of the church," they could unite. The Supreme Court had that opinion before it, but did not see fit to endorse it. We have discussed this constitutional provision elsewhere.

Next we have *Mack vs. Kime*, by the Georgia Supreme Court, 129 Ga. 1, which Court followed the opinion of *Fussell vs. Hail*, in the Illinois Court of Appeals, 134 Ill. Ap. 620, and holds that the Court will not go back of the Church Adjudications. This Court does not discuss the distinction between cases wherein property rights are involved, but bases its opinion upon *Fussell vs. Hail*, *supra*, wherein the Illinois Supreme Court afterwards said no property rights were involved.

Next we have *Wallace vs. Hughes* (115 S. W. 684) by the Kentucky Court of Appeals, wherein by a divided Court, Settle, C. J., not sitting and Nunn, J., dissenting the Court held that the C. P. General Assembly had the power to enter into the union. The Court goes into the constitutional power to form the union and is of the opinion that there was such, but proceeds upon what we deem an erroneous theory, in that it holds, that the adjudication of ecclesiastical tribunals are binding upon civil Courts. This is apparent from the following language in the opinion.

"We think the foregoing authorities establish beyond question that, unless there is something in the Constitution of the Cumberland Presbyterian Church, as it existed before the union, which denied jurisdiction to the General Assembly, with the approval of the Presbyteries, to authorize the union under discussion, the action by which the two churches were reunited must be held valid and binding so far as the civil courts are concerned."

Next in order is *Brown vs. Clark*, by the Supreme Court of Texas. That Court follows and relies upon the following cases: *Fussell v. Hail*, 134 Ill. App. 620, a case in which no property rights were involved, and practically ignored by the Supreme Court of the State in the same case; *Mack vs. Kline*, 129 Ga. 1, which followed the Ills. Court of Appeals; *Wallace vs. Hughes*, Kentucky Court of Appeals, and *Watson vs. Jones*, 13 Wallace. Not another case is cited and the Court sought cover under the doctrine that Civil Courts are bound by decrees of ecclesiastical tribunals, even where property rights were involved as they were. The Court overrules the opinion of the Court of Civil Appeals, which opinion reviews many of the authorities which we have reviewed, and cites even others. For thoroughness of research the latter is much the better of the two opinions.

The views which we have expressed upon this union have been entertained in full or in part by the following cases.

Clark vs. Brown, (108 S. W. 430) Texas Court of Appeals,

Ramsey vs. Hicks, Ind. Court of Appeals,

Ramsey vs. Hicks (87 N. E. 109) Ind. Court of Appeals.

Fussell vs. Hail, Supreme Court of Illinois.

In the latter case, the Court clearly indicates that had property rights been involved an inquiry into all matters would have been proper.

But whatever may be the views of other Courts as to the duty of a civil Court to merely act as the clerk of an ecclesiastical Court and register its decrees upon any question, in a case wherein property rights are involved, it has never been the doctrine of this Court from the case of Watson vs. Garvin, in 54 Mo. to this date, and our views as we think we have shown, have been those of a great majority of the Courts. Justice Miller in the Watson vs. Jones case, *supra*, concedes that his ruling was contrary to English authority, and in the Free Church of Scotland case, in Appeal Cases for year 1904, the English rule is adhered to in all its strictness and the two church creeds examined, pronounced not identical and the union declared void.

VIII.

This union is an unwarranted merger of the Cumberland Presbyterian Church into the Presbyterian Church, U. S. A. It is an unwarranted surrender of name, confession of faith, judicatories, and an unconditional merging of the one church into the other. We say unconditional surrender and merger, because one party kept name, creed, government and everything, whilst the other abandoned everything. Such mergers have been condemned by the best considered cases both in this country and England.

In England the attempted union and merger of the Free Church of Scotland and the United Presbyterian Church, was condemned by the House of Lords. Appeal cases, 1904, p. 695.

Such a union is likewise condemned by one of the strongest chancery Courts in this Country, that of New Jersey.

Associated Reform Church vs. Trustees of Theological Seminary, 4 N. J. Ch. R. 77.

You cannot by union or merger put one church into another having a different creed and doctrines, without forfeiting the property held in trust to such members of the body as remain faithful to the original creed and doctrine.

By the deeds, the property in this case is held by F. M. Cockrell, J. L. Roberts and W. K. Morrow, as "trustees of the Cumberland Presbyterian Church of the Warrensburg Congregation," in one deed, and in the others as "trustees of the Cumberland Presbyterian Church in Warrensburg, Mo." This attempted union being invalid, and the plaintiffs herein having dissented from the Cumberland faith and cast their lot with another Church of a different faith and creed, they are not entitled to the beneficial use of this property, but the beneficial use thereof belong to defendants and all other members of the Congregation of the Cumberland Presbyterian Church of

Warrensburg, Mo., who have remained faithful to the doctrines of that Church.

The universal rule is that where there is a schism in a church, those remaining faithful to the tenets of the church at the time of the dispute, whether they be in the majority or the minority, are entitled to hold the property. Of course, if the whole congregation departed from the true faith, and the deed was for the benefit of the local congregation as in this case, they could not be disturbed in their use by an outsider, who had no interest in the trust property. Such is not the case here however. There is a substantial number of the old congregation adhering to the Cumberland Faith, and as such, they are entitled to the beneficial use of the property involved.

The decree nisi, is for the wrong party. The judgment will be reversed and the cause remanded with direction to the Circuit Court to dissolve the injunction and dismiss the bill of the plaintiff and enter judgment in favor of defendants and against the plaintiffs for all costs. It is so ordered Valliant, C. J. Burgess & Fox, concur in these views.

Valliant, C. J., whilst concurring in all that is said in this opinion in separate opinion or motion for rehearing has added some additional views, in which Burgess, Fox and Graves, concur. Woodson, J., dissents in separate opinion; Lamm, J., likewise dissents and expresses his views in separate opinion. Gante, J., did not sit.

SEPARATE CONCURRING OPINION ON MOTION FOR REHEARING.

VALLIANT, C. J.—The opinion of my learned Brother Graves, in which I concur, so completely covers all the points in the case that I hesitate to attempt to add anything more, but in the motion for rehearing there are two points urged with so much earnestness and force by the learned counsel for respondents that in deference to them I feel constrained to say a few words.

I. It is contended that the General Assembly of the Cumberland Presbyterian Church had full control of the subject and had authority to do what they essayed to do and what respondents think they have accomplished.

Before and until the accomplishment of that act there were two separate organizations, two separate entities, the Presbyterian Church U. S. A., and the Cumberland Presbyterian Church, each having a confession of faith essentially different from the other, at least a confession of faith which one of them interpreted to be essentially different from the other, and which, because of that interpretation, whether right or wrong, held itself independent of and separate from the other. But that act, whether we call it a merger, a union or reunion, if full effect be given to it, was an extinguishment of the Cumberland Presbyterian Church as an entity; it was an extinguishment even of the General Assembly itself which committed the act.

As a rule an executive body appointed to administer the affairs of an association, is created to effectuate the purpose of the associa-

tion: to preserve it, not to destroy or extinguish it. However plenary in words the powers given to such a body may be, they must be construed in the light of the purpose for which they were given. In this particular there can be no difference between a church organization and an organization of any other kind, unless it be that the presumption that the executive Board was created to preserve and perpetuate is stronger in regard to a church organization than any other, because a church organization always looks to perpetuity.

It is almost impossible to imagine an organization delegating to its executive Board, or its administrative body, by whatsoever name it may be called, the power to take its own life, to destroy the organization; certainly no such power can be implied, and if it conferred, it must be by express terms. There is nothing in the record in this case to show that any such power was conferred on the General Assembly of the Cumberland Presbyterian Church. All the powers conferred were to aid in carrying into effect the purpose for which the church was organized. The powers that the General Assembly had at the date of this alleged union were the same and only the same that it had from the beginning of the organization of the Church. Surely there was nothing in the original act of the church organization that indicated a purpose to unite with or become merged into the Presbyterian Church, therefore it cannot be implied that the power to effect such a union or merger was given to the General Assembly at the beginning of the church organization, and there have been no additional powers given since. It is argued in one of the briefs that the power of the General Assembly was derived, not from the people composing the church, but from the Divine Founder of the Christian religion. That may or may not be true as a theological dogma.—We do not know. Human tribunals are limited within the bounds of human laws, and, therefore, if we should attempt to follow that argument it would lead us outside of our boundary and we should not be able to find our way. The Church has its written laws and those laws were written by men and we can only interpret them as the works of men. The only knowledge we have of the powers of the General Assembly is derived from those written laws. It is said in the brief that all the membership of the Cumberland Presbyterian church assented to a declaration contained in the church constitution to the effect that the governmental power of the Church comes from the Divine Founder, and therefore the defendants in this suit cannot question the act of the General Assembly. But the same constitution which it is claimed concedes the Divine authority of the General Assembly in matters of church government, specifies certain powers which are conferred on the General Assembly, and among those specifications the power to transfer all members of this church into another church is not expressed.

If we are to understand the argument to be that the power of the General Assembly is unlimited because of its Divine authority, then it would follow that the General Assembly could merge this church into any other Christian Church, however different in its confession of faith. Assuming that the General Assembly of the Cumberland Presbyterian Church derived its authority from the Divine Founder, we must assume also that the General Assembly of the

Presbyterian Church U. S. A., derived its authority from the same Divine source, and, if so, in matters of Christian faith both Assemblies were unerring. Yet we find that in 1810 there was a wide difference in the Confessions of Faith of the two churches as each interpreted it, and that difference existed until 1906, when the General Assembly of the Cumberland Presbyterian Church extinguished that Church by merging into the Presbyterian Church U. S. A. For nearly a hundred years the Divinely created and Divinely empowered General Assembly of the Cumberland church suffered its members to grope in error on the very point of faith on which that church was founded; that is to say, the member of the Cumberland Church groped in error if there was during all that time really no difference in what they deemed was essential in the dogmas of the two churches, because the Presbyterian Church U. S. A., has been careful to say that it has not receded from the position it has held from the first. We say this with perfect reverence and only to show how impossible it is for a human tribunal to follow the purely theological argument of the learned counsel who advance it. We are concerned now only with a question of title to property, and we are bound to decide that question according to human law. Whilst title to real estate is the only question before us to decide, yet in the argument a question of personal right might arise if full effect is given to the alleged act of union or merger. If that act carries the property of the Cumberland Presbyterian Church into the Presbyterian Church U. S. A., it carries also its members, who ipso facto become members of the Presbyterian Church and subject to its discipline; the only way an individual member could avoid it would be to withdraw, and withdrawal concedes membership. Therefore, either one of these defendants, if he should act contrary to a rule of the Presbyterian Church or express a disbelief in one of the Articles of Confession of Faith, would be liable to have charges preferred against him in a court of that church and if found guilty have the stigma of expulsion pronounced against him. Is it possible that one could be so stigmatized by a church in which he never voluntarily became a member?

II. The other point on which I will express my views is the contention that in so far as the defendants' case rests on what they claim to be a difference in the Confessions of Faith of the two churches it is without foundation, because the General Assembly of the Presbyterian Church U. S. A., has so interpreted its Confession of Faith that it does not mean to teach fatalism and is therefore not what the founders of the Cumberland Presbyterian Church thought it was, and that judgment of the ecclesiastical court on that question is final, and cannot be reviewed or its correctness questioned by this or any other court.

It may be conceded that the judgment of the church court declaring that the meaning of the Church dogmas is conclusive on all the members of that Church, but it is not conclusive on those who are not members. It may be conceded also that even a majority of the members of the Church, if they should dissent from the interpretation put upon its written doctrines by the Church Court, would have no right to claim to be the Church and to hold the Church property in opposition to the minority who yield to the judgment of the

Church Court, but when the Church is seeking to reach out and take in people who never were members and who refuse to become members, a different case is presented.

Doubtless many of the points of difference between different churches arise because those outside of a particular church interpret its dogmas to mean what the church itself says they do mean. The interpretation put upon its dogmas by the church itself is binding on its own members, but not on those who are not its members, and a person outside has a right to put his own interpretation on them when they concern him and to govern himself accordingly. Perhaps if the General Assembly of the Cumberland Presbyterian Church had adopted the Confession of Faith of the Presbyterian Church and had then put an interpretation on it, that interpretation would be binding on its members, but that was never done; the only thing the General Assembly of the Cumberland Church did was to merge its Church into the Presbyterian Church, while that church in its most solemn form declared it had never receded from the dogmas which it had always declared.

Therefore, in a case involving title to property, if a question arises as to the meaning of certain clauses in the Confession of Faith of a particular church and if the parties litigant are all members of the same church and if the highest ecclesiastical court of that church has put on the disputed clauses a certain interpretation, this court would adopt that interpretation as conclusive; but if the parties litigant on one side were not members of that church, we would have to take the written Confession of Faith and interpret it as we would any other written instrument. Burgess, Fox and Graves, JJ., concur in the views herein expressed. Gantt, J., not sitting. The motion for rehearing is overruled.

35b. Defendants now offer in evidence the final judgment rendered in said cause of Boyles et al., vs. Roberts et al., in the Circuit Court of Cooper county, Missouri, in conformity with said opinion and directions of the Supreme Court of the State, at the October Term, 1913, of said Circuit Court, as follows:

Now on this day come the defendants hereto by their attorneys and upon motion of defendants, this cause is placed upon the docket of this Court, and counsel of defendants suggests the death of the defendant, W. K. Morrow and said cause is ordered abated as to said defendant; whereupon, said cause is taken up and submitted to the Court upon the opinion and mandate of the Supreme Court of Missouri, heretofore filed in this Court, and also upon the pleadings and evidence in said cause, and the Court being fully advised in the premises, under and in pursuance of the Mandate aforesaid, doth find the issues herein favor of the Defendants and against the Plaintiffs on the motion to dissolve the temporary injunction heretofore granted in this cause by the Hon. Nick M. Bradley, Judge of the Circuit Court of Johnson County Missouri, should be sustained and the injunction dissolved; that the Plaintiff's Bill should be dissolved; that the title to the Seventy (70) feet off the South end of the West half of Block "M" in Grover's Second Addition to the City of Warrensburg, Johnson County, Missouri, as laid off on the plat of said Addition now of record in the Office of the Recorder of Deeds, in

and for said County, on which is situated the Church building of the Worrensburg Congregation of the Cumberland Presbyterian Church, together with all personal property situate and contained therein, remains and vests in the trustees of the Werrensburg Congregation of the Cumberland Presbyterian Church, the representatives of the true and lawful owners thereof; that the defendants are entitled to the immediate and exclusive possession of said property and that the costs should be taxed against plaintiffs herein.

It is therefore ordered, adjudged and decreed by the Court that the plaintiffs take nothing in this action; that the motion to dissolve the temporary injunction or restraining order heretofore granted in this cause, be and the same is hereby sustained, and the said temporary injunction dissolved; that the defendants and those who co-operate with them constituting and comprising the Warrensburg Congregation of the Cumberland Presbyterian Church, constitute and are the legal and rightful owners of the property herein described, and are entitled to the full and complete possession thereof; that Plaintiff's Bill be dismissed and the costs incurred in said cause, be taxed against the plaintiffs in the sum of one hundred forty nine dollars and fifty cents, and that the defendants have execution therefor and the possession of said property.

State of Missouri)

(SS

County of Cooper)

I, A. L. Haun, Clerk of the Circuit Court within and for the County and State aforesaid hereby certify that the above and foregoing is a full, true and complete copy of the judgment and order of the Court in the above entitled cause, as fully as the same appears of record in my office.

In Testimony Whereof I have here unto set my hand and affixed my official seal at office in Boonville, this 22nd day of May, 1913.

A. L. HAUN, Clerk Circuit Court.

36. In addition to the Minutes of the Synod of Missouri, of the Cumberland Presbyterian Church for the year of 1874 concerning the Educational Commission and the Plan of Endowment; and to the minutes of Ozark Synod of the Cumberland Presbyterian Church, for the same year concerning the same matters; and in addition to the charter of the Educational Commission and the charter of Missouri Valley College, offered by the complainants, from the printed abstract of record in Missouri Valley College et al., v. Guthrie et al., on appeal to the Supreme Court of Missouri, the Defendants now offer in evidence from the said printed abstract of record from the minutes of the Synod of Missouri of the Cumberland Presbyterian Church for 1887, and the from the report of the secretary of the Educational Commission to said Synod, the following beginning with the 21st line of page 110, said record and ending with the 15th line on page 111 thereof:

"Hence, a large number of the brethren in the different Presbyteries within the interested bounds were addressed by us, asking their co-operation in raising the needed \$25,000. With marked un-

animity the brethren responded favorably, and conferences of ministers and laymen were held in each of several Presbyteries to consider the matter. Most of these meetings were attended by the President of the Commission, who explained fully the prospects of the work and the purposes of the executive committee. As a result one or more brethren were put to work in their respective Presbyteries soliciting contributions to the endowment.

Without going further into detail, it is sufficient to say that when the Commission assembled in annual meeting in Kansas City, on September 13th, 1887, it was found from the President's annual report that there was wanting only \$2,585 to complete the \$25,000 for which this special effort had been made. This deficit was secured during the meeting of the Commission, whereupon the Commission joined in a prayer of thanksgiving to the Almighty God for these results of His blessing upon the work. Being thus fortified by prayer, and by the additional \$25,000 of endowment, the Commission unanimously adopted the following resolution:"

37. The defendants offer in evidence from the same record last above mentioned and from the same Minutes and from the same report, beginning with the 23rd line on page 112, of said record and ending with the 19th line on page 113 thereof, as follows:

"It is, therefore, with profound gratitude to God that the following, taken from the President's "Financial Statement for the Year," is presented for your information:

In the treasury (including interest)	\$ 1,201.66
As seen in the Treasurer's report for the past	
year	\$19,592.02
Two gas bonds, \$500 each, and one year interest	1,060.00
Cash in my hands since	486.20
	<hr/>
	\$21,138.22
Notes on hands	26,102.50
Written pledges given at Pertle Springs, not yet redeemed	4,725.00
Written pledges given at this meeting	200.00
Real estate	1,600.00
	<hr/>
	\$32,627.50
Notes and pledges given at this meeting and added hereto by action of Commission.....	2,585.80
	<hr/>
	\$ 2,585.80
	<hr/>
	\$56,351.52
Bequests	25,000.00
	<hr/>
Grand total	\$81,351.52

38 The defendants offer in evidence from the same record last above mentioned and from the Minutes of the Synod of Missouri of the Cumberland Church for 1888, beginning with the 20th line on

page 119 of said record and continueing to and including the 8th line on page 120, showing the refusal of the Synod to allow the board to be made a self-perpetuating body, and the lengths of terms for which the trustees should be elected, as follows.

"The Synod resumed the consideration of the fourth item of the report of the Educational Commission and concurred in the same.

Sections No. 1 and 2 of the fifth item were concurred in. Section No. 3 was disapproved by the Synod, and upon the matter of business therein contained the following decision was made:

The number of trustees agreed upon was thirteen, apportioned to the several Synods as follows:

The Synod of Missouri, seven; Kansas Synod, three; Ozark Synod, three, and that five of said trustees shall be a quorum for the transaction of business, and that the term of office be for six years dating from the annual Synodical meetings in 1888; and it was further determined that the Synod of Missouri should elect three trustees for a term of six years, two for a term of four years and two for a term of two years.

39. The defendants offer in evidence from the same Minutes and record last above mentioned, the report of the committee nominating trustees and the adoption of said report, beginning with the 20th line on page 121 of said record and continueing to and including the 6th line on page 122.

"The committee appointed to nominate trustees presented a report which was amended and adopted as follows:

Your committee recommend that you appoint the following parties as your trustees: Rev. E. D. Pearson, D. D., of Louisiana, Mo., for six years; John C. Cobb of Odessa, Mo., for six years; William T. Baird of Kirksville, Mo., for six years; A. C. Stewart of St. Louis, Mo., for four years; J. E. Richie of Sedalia, Mo., for four years; Peter H. Rea of Marshall, Mo., for two years, and Thomas M. Casey of Clinton, Mo., for two years.

Respectfully,

TAYLOR BERNARD,
J. A. PRATHER,
I. N. CARSON.

40. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church for the year of 1888, beginning with heading "Resolutions" on page 129 said abstract of record above mentioned and continueing and including the 7th line on page 130 thereof, the following:

RESOLUTIONS.

The following resolution was offered by Rev. J. B. Mitchell, which was unanimously adopted:

Resolved, That the Faculty Trustees of our College, in organizing the school, while arranging for such separate courses for male and female students respectively as their judgment may suggest, shall, however, admit female students to any and all the classes of the institution as may be desired by them and award to them the regular honors of such classes upon the same basis as that established for males.

The following additional resolution by Bro. Mitchell was also adopted:

Resolved, That after the chair of Biblical Instruction in our College is opened, the regular course of study for both males and females preparatory to graduation shall include the Biography, History, Geography, Literature and Moral Code of the Bible to which may be added such elective studies therein as the Faculty may prescribe.

41. The defendants offer in evidence from the Minutes of the Synod of Missouri for the year of 1888, the report of the Board of Trustees of Missouri Valley College, from page 142 to D. D. Duggins, Secy., on page 144 thereof, as follows:

"To the Moderator and Members of the Synod of Missouri.

As the Secretary of the Board of Trustees of the Missouri Valley College, it is my duty to lay before you the following report:

In compliance with the request of the Educational Commission, the Synod of Missouri, the Ozark and Kansas Synods, each had a called session in the month of May and June and elected the Board of Trustees, thirteen in number.

The Board met in Marshall, Saline County, Mo., on the 13th day of June, and elected Rev. E. D. Pearson, D. D., President; W. T. Baird, Vice-President; D. D. Duggins, Secretary, and T. C. Rainey, Treasurer.

The Treasurer's report was approved by the Board.

The Board received from the Educational Commission

the endowment fund in cash notes, pledges and securities and real estate	\$104,380.08
In bequests secured and recognized as good	2,500.00
Also notes and pledges for building purposes.....	38,000.00
74 lots not sold, valued at	22,000.00

Deed to 40 acres for College campus.

The Board also received the charter which the Educational Commission had prepared and secured, together with the record book and papers in possession of the Commission bearing upon College interests. The Board has held a number of meetings, adopted plans and specifications for the College edifice, advertised for bids on the same, and on the 15th inst., let out the contract for the building, to be completed by the 1st day of October, 1889, for the sum of \$39,400.00. The Board have, in the contract, the privilege of increasing the cut stone work on the foundations 22½ inches and of using Jefferson City stone-brick on the west and north fronts, at the additional cost of \$2,950.00, thereby making the contract \$42,350.00

This does not embrace the heating and furnishing of the building. These will make the building cost \$50,000.00. The Board, on the evening of the 15th inst., went to the grounds and selected the building spot. The contractor gives us every assurance that he will do all he can to have the building in readiness by the first of September, 1889, for opening the College. He commenced work on the foundations immediately and will complete that, if possible, this fall and early winter.

The Board will have an agent in the field at an early day to sell

the seventy-four unsold lots, as well as to receive additional contributions to the endowment.

The Board of Trustees have passed a resolution that there shall be a chair in the College for Biblical Instruction. The endowment of this chair is not yet provided for, but it is hoped that the necessary amount will be secured by the time the College is opened.

We have received the resignation of G. W. Wilson as a member of the Board of Trustees. His resignation has been accepted, and accompanying this report is a copy of the action of the Board in regard to his successor.

All of which is respectfully submitted.

D. D. DUGGINS, Sec'y."

42. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church for the year of 1890, from the report of the Board of Trustees of Missouri Valley College, at page 155 of the abstract of record above referred to, at lines 19 to 27 inclusive thereof, as follows:

"The oversight and management of Missouri Valley College, having been committed to our trust by the Synods of Missouri and Kansas, and being required by the constitution to give an annual account of our stewardship, we submit the following report for your information, inspection and approval touching its work for the past year, its present condition and needs, and its provisions and prospects for the future.

43. The defendants offer in evidence from the same Minutes, report and abstract of record last above referred to, beginning with the 20th line on page 157 said printed record, and continuing to and including the 7th line on page 158 thereof.

"You will observe from the catalogue that some changes have been made in the faculty and three more added to it. The faculty now stands:

Rev. W. H. Black, D. D., President.

Rev. A. J. McGlumphy, D. D., L. L. D., Prof. Mathematics.

W. E. Grube, A. M., Prof. Greek.

A. McGinnis, A. M., Prof. Latin and German.

R. T. Kerlin, A. B., Prof. Latin and French.

J. M. Penick, A. M., Prof. Physics, Chemistry, etc.

Miss I. C. Orr, A. M., History and Elocution.

E. S. Place, School of Music.

Miss L. M. Armstrong, B. A., School of Fine Arts.

43a.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

The Synod of Kansas of the Presbyterian Church in the United
States of America, et al.,

VS.

Missouri Valley College, a Corporation, et al.,

Complainants

Number 3540.

Defendants.

STIPULATION.

It is hereby stipulated and agreed that from the appointment of the First Board of Trustees of Missouri Valley College, in 1888, by

the Synods of Missouri, and of Kansas of the Cumberland Presbyterian Church, annual reports were made by said Board of Trustees, regularly to the annual sessions of each of said Synods, down until and including the year of 1905, of the condition, prospects, and necessities and wants of said college, showing the number and positions of the faculty the number, age, sex, advancement, time of attendance of pupils for the Collegiate year last passed, and also a particular and detailed statement of all monies received, from whom and on what account with, a like statement of all disbursements, also a particular statement and account of the investment of said endowment fund, and of each and every fund under its control, with the proceeds and income of each.

That since said year of 1905, said Board of Trustees have not made said reports to the body claimed by defendants to be the Synods of Missouri of the Cumberland Presbyterian Church, but have made said reports annually to the Synods of Missouri and of Kansas of the Presbyterian Church in the United States of America, claimed by complainants to be the Synods of the United Church.

That from the incorporation of said College in 1888, the said Synod of Missouri and Kansas of the Cumberland Presbyterian Church, respectively received and passed upon said reports, and regularly elected members thereto to fill the places of members whose terms expired, down until and including the year of 1905.

VIRGIL V. HUFF, Solicitor for Complainants.

ROBERT M. REYNOLDS, Solicitor for Defendants.

43b.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

The Synod of Kansas of the Presbyterian Church in the United States of America, et al.,

V.S.

Complainants

Number 3540.

Missouri Valley College, a Corporation, et al., Defendants.

STIPULATION.

It is hereby stipulated and agreed for the purpose of this trial:

That there are persons alleged in the answer to be necessary and indispensable parties to this action, who are not made parties to the same, to-wit: E. D. Pearson, W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell.

That at the time of the filing of this suit and the answer herein such persons claimed to be legal members of the Board of Trustees of Missouri Valley College.

That all the said parties on the 25th day of May, 1906, were lawful members of such Board, having been elected as such by the Synod of Missouri of the Cumberland Presbyterian Church.

That the Synod of Missouri A of the Presbyterian Church in the United States of America in October, 1906, elected E. D. Pearson, John C. Cobb, W. T. Baird and W. P. Stark to succeed themselves as members of said Board for the term of six years each.

That the Synod of Missouri of the Presbyterian Church in the United States of America claimed by complainants to be the United Church, in the year 1908, elected Ben Eli Guthrie, P. H. Rea, and Luther Nickell to succeed themselves as members of said Board for the term of six years each, and in 1910, elected A. C. Stewart, George Ward, and David F. Manning, to succeed themselves as members of said Board, for the term of six years each, and at the same time elected Rev. Merel H. Anderson to fill out the unexpired term of Rev. E. D. Pearson, then deceased, as a member of said Board, and in 1912, elected J. C. Cobb and W. P. Stark to succeed themselves as members of said Board for the term of six years each, and at the same time elected J. L. Roemer as a members of said Board to succeed Rev. Merel H. Anderson for a term of six years, and Isaac H. Orr to succeed W. T. Baird, then deceased thereon, for a term of six years.

That the said John C. Cobb, W. P. Stark, Ben Eli Guthrie, P. H. Rea, Luther Nickell, A. C. Stewart, George Ward, David F. Manning, J. L. Roemer, and Isaac H. Orr, now claim to be lawful members of the said Board of Trustees of Missouri Valley College.

That if it be found to be as alleged in the answer that said persons are indispensable parties to this action, it is agreed that J. L. Roemer and Isaac H. Orr are proper persons to be made such parties in place and stead of their predecessors on said Board, the Rev. E. D. Pearson and W. T. Baird, now deceased.

That at the time of the institution of this suit and at the time of the filing of the answer herein, the said E. D. Pearson, W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell were citizens and residents of the State of Missouri, and that the said W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, George Ward, Ben Eli Guthrie, Luther Nickell J. L. Roemer and Isaac H. Orr, are now citizens and residents of the State of Missouri.

44. The defendants offer in evidence from the Minutes of the Synod of Missouri, A., of the Presbyterian Church in the United States of America from the report of the Board of Trustees of Missouri Valley College to said Synod found at pages 400 to 402 of the said printed abstract of record last above referred to, beginning with the 10th line on page 400 and continuing to heading "Description" on the 402 page thereof, as follows:

Marshall, Mo., Sept. 1, 1906.

To Synod of Missouri A, of the Presbyterian Church U. S. A.

Dear Brethren: Missouri Valley College has been in existence since 1889. It was founded by the co-operation of the Synods of Missouri and Kansas of the Cumberland Presbyterian Church and the public. The territory comprised in these synods is as follows:

In the Synod of Missouri, the State of Missouri; in the Synod of Kansas the States of Kansas, Nebraska and Colorado. According

to the terms of union between the Presbyterian Church, U. S. A., and the Cumberland Presbyterian Church, this valuable property, with its grounds, buildings, endowment, influence and good will, is now the property of the united church. (See "Joint Report of Union." Concurrent Declaration No. 6, Minutes of the General Assembly, 1904, page 138.) Moreover, it was provided in the "Joint Report on Reunion and Union" of 1906 that a solemn declaration should be made by the Moderator of our two assemblies and the same was made in the following words: "I do hereby solemnly declare and publicly announce that the basis of reunion and union is now in full force and effect."

At the regular meetings of the Synods of Missouri and Kansas of the Cumberland Presbyterian Church in 1905, the following identical resolution was adopted:

Resolved: That in view of the approaching union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America the Board of Trustees of Missouri Valley College be, and they are hereby instructed, directed, authorized and empowered to take all necessary and proper steps, and adopt all necessary and proper measures, as they may be advised, to secure the title of the college, together with the title of its endowment and all its other property, real personal and mixed, to the united church, and also to secure all its rights, immunities privileges and franchises in its relation to the united church, so that the institution shall preserve its integrity and maintain its policy with the right and freedom to modify and formulate its policies as to it shall seem proper and necessary for the best interests of the institution and the church under the varying vicissitudes of the future. Minutes of Synod of Missouri Cumberland Presbyterian Church, page 35.

It will be seen from the above that your synod has a vital interest in Missouri Valley College, inasmuch as your reverend body occupies territory comprised either in the Synod of Missouri or the Synod of Kansas of the former Cumberland Presbyterian Church.

When the synods shall come together in their final form in 1907 the Board of Trustees will have some recommendations to submit as to the future relations and control of Missouri Valley College as it is recognized that in Kansas, Nebraska and Colorado there are other Presbyterian colleges which have a claim upon your fostering care. In Missouri it is the sole institution of learning owned outright by the synod. It is with pardonable pride that we present you with a report which shows a growing college with a substantial equipments in grounds, building, furnishings, apparatus and endowment; with a good standing among colleges and a fair patronage; with a clean record and no debts. It is one of our charter obligations to keep out of debt. We rejoice that we can speak so comfortingly to the new constituency which the union of the churches brings to the college. This institution is not a liability, but an asset to the united church.

45. Defendants offer in evidence from the Minutes of the Presbyterian Church in the United States of America, for the year of 1908, from the report of the Board of Trustees of Missouri Valley

College, a statement of the assets of Missouri Valley College, found at pages 433 and 434 of the printed abstract of record above referred to, beginning with the 9th line on page 433 and ending with the 8th line on page 434, thereof).

ASSETS OF MISSOURI VALLEY COLLEGE.

Endowment—

General	\$137,096.44	
Baird Chair of Greek	10,000.00	
Campbell Chair of Christian Philosophy..	10,000.00	
Rose Chair of English Language	10,000.00	
Birckhead Dormitory Support Fund	10,000.00	
Ozark College Fund	1,621.74	
Centennial Fund	6,326.40	\$185,044.58

Buildings—

Main College Building	\$ 65,000.00	
Stewart Chapel	40,000.00	
Birckhead Dormitory	10,000.00	
Engine House	12,000.00	127,000.00

Equipment—

Library Books, Furniture and supplies ..	\$ 32,724.75	
Laboratories and Museum.....	8,552.62	
Pipe Organ	3,000.00	
Pianos	5,100.00	
Furniture	9,706.39	59,083.76

REAL ESTATE—

Campus	\$ 35,000.00	
Lots	4,000.00	39,000.00
		\$410,128.34

Respectfully submitted,
GEO. H. ALTHOUSE, Treasurer.

46. The defendants offer in evidence the oral testimony of Mr. D. D. Duggins on direct examination, found at pages 435 to 439 said printed abstract of record of Missouri Valley College et al., vs. Guthrie et al., beginning with the 5th line on said page 435 and continuing to and including the 20th line on page 439, thereof, as follows:

Q. State your name, please. A. D. D. Duggins.

Q. You live here in the city of Marshall, Missouri? A. Yes, sir.

Q. You have lived here a number of years? A. Forty years.

Q. Do you remember the time when Marshall, Mo., was selected as the location for the Missouri Valley College? A. Yes, sir.

Q. You were living here at that time? A. Yes, sir.

Q. I will ask you if you know of any efforts made here by citizens of Marshall, Mo., this county, to have that College located here? A. Yes, sir.

Q. Were you active in that behalf? A. Yes, sir, I was a member of the local land syndicate, as it was called, for the purpose of raising money to complete the endowment fund for the purpose of getting the College, that is, the Missouri Valley College located at Marshall, Mo.

Q. A member of what? A. We called it the land syndicate, that is the name it was organized under and there were some twenty-five to thirty-five of the citizens, including myself, went in and bought absolutely 180 acres of land for the purpose of making an offer for the location of Missouri Valley College.

Q. Of getting together a fund to make an offer? A. Yes, sir, to the Cumberland Presbyterian Church for the location of Missouri Valley College.

Q. What body were you dealing with? A. We were dealing with what was called the Educational Commission.

Q. That was an incorporated body? A. Yes, sir; Dr. J. B. Mitchell was president of that Commission.

Q. I will ask you if your syndicate you referred to held regular meetings? A. Yes, sir.

Q. And kept minutes? A. Yes, sir; I was secretary of the syndicate.

Q. Did you keep the minutes? A. I did.

Q. I will ask you to look at that book and see if that is a copy of the minutes you kept? A. Yes, sir, that is the book, in my own handwriting; the first meeting was held February 7th, 1888. Mr. P. H. Rea was treasurer and I was secretary and I kept all of these minutes.

Q. I will ask you what you did with the land that you purchased here finally? A. Well, after having organized and having gotten the land in a tangible shape we had the title placed in James A. Gordon, as we bought it we had the title placed in James A. Gordon, as trustee, then we had him and all the parties of this land syndicate; I prepared the declaration of trust showing whom it was held for.

Q. Look at that paper. A. Yes, sir, this is the declaration of trust signed by James A. Gordon, Trustee, and the other parties of that syndicate.

(Which paper referred to here above and certified by the witness is marked by the stenographer as Exhibit "A-17.")

Q. Please, then, state what you did with this paper? A. Well, after we prepared the paper and the bid for Missouri Valley College, which is a bid for the location of the College at Marshall, Missouri, in writing; after that was prepared and signed and ordered sent to the committee, that is, the Educational Committee, I made a copy of the same.

Q. You mean the Educational Commission and that is the original bid and shows the subscriptions raised for the money for the location of this College at that time, with the report and a certificate of the cashiers of the different banks in Marshall, Missouri, as to the solvency of the paper? A. Yes, sir, that is a certificate of the different cashiers of the different banks at Mar-

shall, Mo., showing the solvency of the paper that we presented to the Educational Commission.

Q. The Educational Commission accepted this bid, did they not? A. Yes, sir.

Q. And you caused all of the property of this syndicate in accordance with that bid, to be turned over to the Commission?

A. Yes, sir; Colonel Gordon executed a deed to the College and the balance of the property was turned over to them.

Q. The bid recites the fact that you had considerable cash on hand which you turned over? A. Everything that was there was turned over.

Q. How did you get that cash? A. We got this out of 180 acres of land located out here nearly in a square. We had it surveyed and platted and reserved the campus of forty acres around it, the balance was laid off in town lots, these town lots were sold to various and sundry persons and those that we could not sell or get to pay for a lot we turned over into the hands of Mr. Gordon.

Q. Did you have any written contract with these parties for the purchase of these lots? A. I think so.

Q. Look at the bottom of that page I have handed you. Is that a paper showing the subscriptions regarding the lots that I have referred to here? A. Yes, sir, that is one that I have referred to as a subscription or a contract.

Q. These people in purchasing these lots would sign that paper? A. Yes, sir, that is a copy they signed to the Educational Commission showing how this property was sold and they were called cash subscriptions and we went over them and found it was, which is shown by the attached exhibit.

Q. Everybody that bought a lot out there had to sign a paper of that kind? A. Yes, sir, they signed a certificate of purchase.

(Which said paper as referred to is marked by the stenographer as Exhibit "A-18.")

Q. None of the lots were worth the money paid for them? A. No, sir, none expected them to bring that much.

Q. You remember who you purchased them from? A. One piece was purchased from John Coyle and another from John Haggins.

Q. Both of these tracts of land were paid in both instances to James A. Gordon, trustee, and then that declaration of trust was executed? A. Yes, sir.

Q. Then Mr. Gordon as trustee conveyed deeds to those of the subscribers or purchasers that bought the same? A. Yes, sir, at the instance of this land syndicate.

Q. And there was also conveyed a certain tract of land for the College campus? A. Yes, sir, my opinion is he did not make any immediate conveyance of these lots; I was a member of the Board of Trustees of Missouri Valley College. My recollection is that after we sold a lot he then would make a deed.

Q. He would make a deed to the purchaser? A. Yes, sir.

47. The defendants offer in evidence from said printed abstract of record above mentioned, the testimony of Dr. J. L. Goodknight

found at pages 478 and 479 of said record, beginning with the 14th line on page 478 and ending with the 12th line on page 479 thereof, as follows.

Q. State your name, please. A. J. L. Goodknight.

Q. Your profession, please? A. A Minister of the Cumberland Presbyterian Church.

Q. Where do you live? A. Lincoln, Illinois.

Q. How long have you been a member of the Cumberland Presbyterian Church? A. Ever since I was 14 years old; I am 66 now.

Q. Are you holding any official position with and in connection with the General Assembly of the Cumberland Presbyterian Church? A. Stated clerk and treasurer.

Q. How long have you been such? A. Since the Assembly of 1907; I was elected at the close of the General Assembly of 1907.

Q. At Dixon? A. Dixon, Tennessee.

Q. In your duties as stated clerk of the General Assembly of the Cumberland Presbyterian Church have you, or not, any means of knowing what Presbyteries or Synods of that Church have severed their connection since May 24th, 1906? A. I have.

Q. Will you state whether or not since that time there has been a Kansas Synod of the Cumberland Presbyterian Church? A. Not an organized Synod.

Q. State whether or not any of the Presbyteries making up the Kansas Synod of the Cumberland Presbyterian Church have existed in an organized form since May 24th, 1906? A. They have not.

48. The defendants offer in evidence from said printed abstract of record last above mentioned, the deposition of H. G. Nicholson on direct-examination, found at pages 482 to 493 of said record, inclusive, and beginning with the 14th line on said page 482 and ending with the last line on page 493 thereof, as follows:

Q. Please state your name, age, place of residence, profession or calling. A. H. G. Nicholson, 730 Palmer avenue, Pueblo, Colorado; age 68 years; minister of the Cumberland Presbyterian Church.

Q. Will you please state with what body of Christians or particular church denomination you are now associated or affiliated with? A. With the Cumberland Presbyterian Church as missionary of the Board of Missions.

Q. How long have you been associated with the Cumberland Presbyterian Church? A. About forty years.

Q. In what capacity? A. As a minister of the gospel.

Q. Do you know the territorial limits of what formerly comprised the Synod of Kansas of the Cumberland Presbyterian Church from about the year 1889 up until 1906? A. I do.

Q. Will you please state the territorial limits of such Kansas Synod of the Cumberland Presbyterian Church? A. It comprised the states of Kansas, Nebraska and Colorado.

Q. Do you now live within such territorial limits? A. I do.

Q. Did you live within such territory or district at any time from 1889 until and including the year 1906? A. I did then and do now.

Q. Were you at such time a member of or amenable to the jurisdiction of the Kansas Synod of the Cumberland Presbyterian Church as a churchman or in your affiliations as a Cumberland Presbyterian? A. Yes, sir.

Q. Have you still resided within the territorial limits of said Synod since the year 1906? A. I have.

Q. I will ask you to state to the notary if you formerly attended the annual meetings of the Synod of Kansas of the Cumberland Presbyterian Church, personally? A. I did.

Q. At such times and at such meetings of the said Synod were the congregations or Presbyteries represented in the meetings by delegates or otherwise? A. They were. Each minister in the bounds of the Presbytery was entitled to attend the Synod at each meeting. It was not a delegated body.

Q. I will ask you to state to the notary if you attended the Presbytery or any of the Presbyteries comprising the Synod of Kansas? A. I did attend the Rocky Mountain Presbytery.

Q. In what capacity did you attend the Presbytery? A. As a minister representing the churches and also as stated clerk. I was also moderator several times.

Q. Is there now a Kansas Synod of the Cumberland Presbyterian Church? A. No, sir.

Q. You may please state to the notary how long it has been since there has been such a Synod of the Cumberland Presbyterian Church? A. Since the fall of 1906. I think it was in August that the last Synod met at Bethel, Kansas, and then the next was a called meeting that met in Colorado Springs in October to transfer the ministers and churches under its jurisdiction to the contiguous Presbyteries of the Presbyterian Church, U. S. A.

Q. You stated that there was a call issued for this meeting of the Synod. Will you please state who made that call. A. The Moderator, Rev. J. H. Kirkpatrick. E. H. Liles was stated clerk of the Rocky Mountain Presbytery and he notified me of the meeting.

Q. I will ask you to state to the notary whether or not the notice you received from Mr. Liles was in writing? A. It was on a typewritten card and signed with pen and ink.

Q. In whose name? A. Signed by Rev. E. H. Liles.

Q. I will ask you if you were familiar with his handwriting? A. I was.

Q. Did you recognize the signature on the card as that of Rev. E. H. Liles? A. Yes, sir.

Q. I will ask you to state to the notary if you still have the card issued by the stated clerk, Mr. Liles, in your possession? A. No, I have not.

Q. Will you please state to the court what became of this card issued by the stated clerk to you? A. It was left in the hands of the clerk of the court in a case in suit at Colorado Springs for the Colorado Springs Church property, brought by W. D. Marlow and others and the Cumberland Presbyterian Church against E. H. Liles and the Presbyterian Church, U. S. A., for the property in litigation at Colorado Springs.

Q. I will ask you to state to the notary if you have made an

attempt to find or get possession of this card after it was filed in that suit? A. I have.

Q. Have you examined the court papers for the purpose of getting possession of this card? A. I interviewed the clerk of the court and the stenographer, in whose possession the card was left, they stated that Mr. Robinson or Mr. Liles, one, had taken away the documents left in their possession and thought that the card was in their possession. It was not in the possession of the clerk or the stenographer. I got all the documents and papers that I left in their possession except the aforesaid cards that had been identified as Exhibits "A" and "B" in the court procedure.

Q. I will ask you to state to the notary if you are personally acquainted with Mr. E. H. Liles, the stated clerk of the Rocky Mountain Presbytery? A. Yes, sir; I am.

Q. I will ask you to state to the notary if you heard Mr. Liles make any statement as to the identification of this particular card, which you referred to as a notice of this meeting?

A. Yes, sir, I did. In the presence of the court he acknowledged the card as one he had written to me as stated clerk and it was admitted as evidence in the case we had in court.

Q. State to the notary if you can give the substance of that notice.

A. Yes, sir, I can give the substance and I have a copy.

Q. If you have a copy of this call which you filed in the court as above stated, I will ask you to read the same to the notary and have it copied in the record and also file the same or a copy thereof with the notary and have it marked Exhibit "A."

A. I have the substance of the copy.

Q. I understand you to say that the copy you have is an exact copy of the notice you received except as to the date? A. Yes, sir.

Q. Do I understand you to say that this is a copy except as to the date of the notice or the date of the call for the meeting? A. I have the date of the letter but not the date for which the meeting was called.

Q. Will you please read that to the notary subject to the objections made by the defendant's attorney? A. "Colorado Springs, Colo., Oct. 6, 1906. Dear Bro. Nicholson: You are hereby notified to attend a called meeting of the Kansas Synod of the Pres. Ch. U. S. A. (formerly known Synod of the C. P. Church) to dissolve the Rocky Mountain Presbytery, and transfer its churches and ministers to the Colorado Synod of the Pres. Ch. U. S. A. to be held in 1st Presbyterian Church in Colorado Springs, Oct. 14, 1906, E. H. Lyles, s. c."

Q. Will you please hand that paper to the notary for the purpose of being identified as Exhibit "A" in these depositions.

(The paper is handed to the notary and is marked exhibit "A" with the initials of John Murphy, by G. A. Langdon, stenographer, and the same is filed herein.)

Q. Will you please state to the notary whose duty it was to issue a call of the character and of the kind that you have referred to as having been given to you. A. It was the duty of the Clerk and the Moderator of the Synod.

Q. Did you attend that meeting pursuant to that call? A. I did not.

Q. At and since the year of 1906 what became of those constituting the members of the Kansas Synod of the Cumberland Presbyterian Church residing within its territorial limits and subject to its ecclesiastical jurisdiction? I mean what became of them ecclesiastically? A. A majority of the members of the Rocky Mountain Presbytery were transferred to the Pueblo Presbytery of the Presbyterian Church U. S. A., the members of one church in the northern part of the Presbytery were transferred to the Presbytery of the Presbyterian Church U. S. A., the members of one church in the northern part of the Presbytery were transferred to the Presbytery of the Presbyterian Church U. S. A. contiguous thereto, the remainder who refused to go into the union still retained their organization at Colorado Springs and also in Pueblo, as Cumberland Presbyterians, but only enough to constitute two small churches.

Q. Did those who were transferred to the Presbyterian Church U. S. A. abandon their connection with the Cumberland Presbyterian Church and the Kansas Synod of the Cumberland Presbyterian Church? A. They did.

Q. I will ask you to state to the notary if the abandonment was not in such numbers as to completely destroy the Kansas Synod of the Cumberland Presbyterian Church? A. It was.

Q. Was such abandonment of such a character as to leave the Kansas Synod of the Cumberland Presbyterian Church without an organization and without sufficient churches, presbyteries and ministers to constitute and maintain its organization as a Synod of the Cumberland Presbyterian Church? A. Yes, sir.

Q. I will ask you to state to the notary how many presbyteries there were in the Kansas Synod of the Cumberland Presbyterian Church. A. I will have to refresh my memory by referring to the records. I believe I have it here.

Huff: To what records are you now referring to refresh your memory?

A. To the minutes of the Presbyterian Church for the year 1906. I will give the Presbyteries in their order that constituted the Kansas Synod of the Cumberland Presbyterian Church prior to 1906. There were five presbyteries; Fort Scott Presbytery, Kansas City Presbytery, Nebraska Presbytery, Rocky Mountain Presbytery and Wichita Presbytery. These Presbyteries constituted the Kansas Synod of the Cumberland Presbyterian Church.

Q. Since 1906 and since the meeting which you referred to in Colorado Springs, have there been sufficient presbyteries of the Cumberland Presbyterian Church to form a synod? A. No, sir. We have not a presbytery, much less a synod.

Q. You mean the Cumberland Presbyterian Church. A. The Cumberland Presbyterian Church has only two partially organized churches, one at Colorado Springs and one at Pueblo. As it takes three to constitute a presbytery, we have not so much as enough to constitute a presbytery, and as it takes three presbyteries to constitute a synod, we have no synod.

Q. I will ask you to state that since the transference of the members of the Cumberland Presbyterian Church to the Presbyteri-

an Church U. S. A. in 1906, I will ask you with what synod or synods the members meet or send representatives to? A. They have affiliated with the different Presbyteries to which they were transferred in the Presbyterian Church U. S. A. and send representatives to the various synods and presbyteries of the Presbyterian Church U. S. A., to which they were transferred.

Q. I will ask you to state if at any time since 1906 have the members of the various churches and presbyteries within the jurisdiction of the synod, being formerly the Synod of the Cumberland Presbyterian Church of the States of Kansas, Colorado, and Nebraska, convene a synod separate or apart from the Synod of the Presbyterian Church U. S. A.? A. No, sir.

Q. I will ask you then to state if these have met at any time since 1906 as a synod except in connection with and as a part of the regular Synod of the Presbyterian Church U. S. A.? A. No, sir. I mean since the fall of 1906 when they disbanded.

Q. Do the Cumberland Presbyterians within the territory formerly comprising the Synod of Kansas of the Cumberland Presbyterian Church now have or claim to have a synod now in existence? A. No, sir.

Q. Or have they had, or claimed to have had since the abandonment or transference of 1906? A. No, sir. We have not had a Presbyterial or a synodical meeting since the fall of 1906.

Q. How long did you say you affiliated with the Cumberland Presbyterian Church within the jurisdiction of the Kansas Synod? A. I have been in the jurisdiction of the Kansas Synod twice. I was in the jurisdiction from 1880 to the spring of 1884 first, then I have been in its jurisdiction since 1892 continuously to the present time.

Q. During the time you were a member of the Kansas Synod and in charge of a Cumberland Presbyterian Church as a minister, were you personally and actively engaged in looking after the interests of the church in your presbytery and synod? A. Yes, sir. I have been pastor all the time since I have been here except two years.

49. The defendants offer in evidence from said abstract of record Missouri Valley College et al., vs. Guthrie et al., the deposition of W. D. Marlow on direct examination, beginning with next to the last line on page 535 of said printed record and continuing to and including page 538 thereof, as follows:

Q. Doctor, please state your name, age, place of residence, professional calling or occupation? A. W. D. Marlow, 72 years of age, Colorado Springs, Colorado, physician.

Q. With what body of Christians or particular church denomination are you now associated or affiliated? A. Cumberland Presbyterian Church.

Q. How long have you been associated and affiliated with the Cumberland Presbyterian Church, in what capacity? Minister, elder, deacon or lay member? A. Since 1856. I have been an elder, deacon and lay member.

Q. Do you know the territorial limits of what formerly comprised the Synod of Kansas of the Cumberland Presbyterian

Church from about the year 1889 up to the year 1906? A. I know what composed the territory, Colorado, Nebraska and Kansas.

Q. Do you now live within such territorial limits? A. Yes.

Q. Did you live within such territory or district at any time from 1889 up to and including the year 1906? A. I lived within such territory all the time between those dates.

Q. At such time or times, were you a member of or amenable to the jurisdiction of the Kansas Synod of the Cumberland Presbyterian Church, or in your affiliations as a Cumberland Presbyterian? A. Yes.

Q. Have you still resided within the territorial limits of said Synod since the year 1906? A. Yes.

Q. Did you formerly attend the annual meetings of the Synod of Kansas of the Cumberland Presbyterian Church, personally? A. No.

Q. Were you and your congregation or Presbyteries represented in such meetings of the Synod by delegates or otherwise? A. Yes.

Q. Is there now a Kansas Synod of the Cumberland Presbyterian Church? A. No.

Q. Please state how long it has been since there has been such a Synod? A. I cannot give the exact date, but it was a short time after 1906. It was dissolved in this town.

Q. When did such Kansas Synod of the Cumberland Presbyterian Church have its last meeting, if you know? A. I do not know exactly, shortly after 1906.

Q. At and since the year 1906, what became of those constituting its members, or membership or residing within its territorial limits and subject to its ecclesiastical jurisdiction? I mean what became of them ecclesiastically? Did they abandon connection with the Cumberland Presbyterian Church and the Kansas Synod thereof or did they ally themselves with other churches, denominations or bodies? Remarks—Mr. Huff objects—Now, Doctor, this is of your own personal knowledge? A. The majority of all those that I know went into the Presbyterian Church U. S. A. and Presbyterian Synod. A number remained in the Cumberland Presbyterian Church and some have allied themselves with other churches.

Q. Doctor, I will ask you if the abandonment was in such numbers and measure as to completely destroy the Kansas Synod of the Cumberland Presbyterian Church? A. Yes.

Q. Was the abandonment in such numbers and measure as to leave the Kansas Synod of the Cumberland Church without an organization and without sufficient churches, presbyteries and ministers to constitute and maintain its organization as a Synod? A. Yes.

Q. I will ask you to state since the abandonment of the Cumberland Church in 1906, if those who united with the Presbyterian Church U. S. A., have met regularly with the Synod of Kansas and other Synods of the Presbyterian Church U. S. A., or sent representatives to such churches? A. They have from this town.

Q. Have the members who formerly affiliated with the Cumberland Presbyterian Church, prior to the year 1906, since that date convened a Synod separate and apart from the Synods of the Presbyterian Church U. S. A., or have they met as a Synod except in

connection with and as a part of the regular Synod of the Presbyterian Church U. S. A.? A. No.

Q. Do the Cumberland Presbyterians within the territory formerly comprising the Synod of Kansas of the Cumberland Church now have, or claim to have a Synod now in existence? A. No.

Q. Have they had, or so claim to have had a Synod since the abandonment and destruction of 1906?

50. The defendants offer in evidence from Minutes of Synod of Missouri of the Cumberland Presbyterian Church for the year of 1902, the Resolutions, beginning with such heading on page 571, abstract of record last above referred to.

The following resolutions were adopted:

Whereas, the Rev. E. E. Morris has moved out of the bounds of the Synod, thus practically making vacant a place in the Board of Trustees of Missouri Valley College.

Therefore, Resolved, That the Synod hereby express its appreciation of the valued services of Brother Morris in the past as a Trustees of the College.

Resolved, That in view of his absence from our bounds, we hereby declare his place in the Board of Trustees vacant, and that W. P. Stark of Louisiana, Mo., be elected to fill the vacancy.

In view of the fact that our young men preparing for the ministry need Homiletical instruction.

Resolved, That we ask the Board of Trustees of Missouri Valley College to consider the propriety of establishing a Homiletical department and a summer school for the benefit of all preachers who may want to attend.

51. The defendants offer in evidence from the Minutes of the regular session of the Lexington Presbytery of the Cumberland Presbyterian Church, March 27th, 1906, found at page 579 of the printed abstract of record, Missouri Valley College et al., v. Guthrie et al., the organization of said Presbytery and the roll of ministers showing S. H. McElvain, G. W. Petry and S. G. McLuney, to be ministers and members thereof, as follows:

The one hundred and forty-sixth semi-annual session of the Lexington Presbytery convened at Urich, Henry County, Missouri, on Tuesday, March 27, 1906, at 7:30 p. m., and the constituting prayer was offered by the Rev. J. W. McGee.

The opening sermon was preached by the Moderator, Rev. S. H. McElvain, from the text Matt. 9:36-88.

ORGANIZATION.

The roll was called and the following members were present.

Ministers—G. P. Baity, M. R. Dougherty, F. E. Duncan, L. D. Ewing, E. V. Headen, W. K. Howe, J. W. Hudiberg, A. H. Kelso, S. G. McCluney, S. H. McElvain, J. W. McGee, Z. T. Orr, G. W. Petty, W. F. Perry, S. R. Shull, J. W. Sullivan, A. Vanausdol, S. J. Walkup, Y. W. Whitsett and J. C. Worley.

52. The defendants offer in evidence from the Minutes of said Lexington Presbytery last above mentioned, for September 25, 26 1906, at pages 614 and 615, the organization and roll of members of said Presbytery, as follow:

Latour, Mo., Sept. 25, A. D., 1906.

The Lexington Presbytery of the Cumberland Presbyterian

Church met pursuant to adjournment in the Cumberland Presbyterian Church in Latour, Mo., this being the 147th semi-annual session. A quorum being present, the meeting was called to order by the Rev. S. H. McElvain, and it appeared that the former Moderator and the stated Clerk were both disqualified by having joined the Presbyterian Church U. S. A., their respective offices were declared vacant and thereupon the Rev. J. G. Dalton was elected temporary Moderator and Elder W. K. Morrow was elected temporary Clerk.

The Presbytery then retired to a nearby school house where it was regularly constituted with prayer by the Rev. J. G. Dalton. On motion the temporary officers were made permanent.

The Rev. H. Clay Yates, D. D., presented a letter from Lincoln Presbytery of the Cumberland Presbyterian Church in the State of Illinois, upon which he was duly received as a member of this Presbytery and his name placed upon our roll.

The Rev. S. B. Zarechor, of Sangamon Presbytery of the Cumberland Presbyterian Church in the State of Illinois, being present and coming well recommended, was on motion received as a member of this Presbytery, his letter to be forthcoming, and his name was placed upon the roll.

ROLL CALL.

The roll was then called with the following result:

Ministers present—J. G. Dalton, S. H. McElvain, G. W. Petty, Adison Vanausdol, H. Clay Yater, D. D.; S. B. Zarechor.

Ruling Elders—John M. Barnett, Chapel Hill; J. B. King, Holden; R. L. Evans, Bates City; John Keith, Mt. Hebron; W. S. McIntire, Mt. Moriah; J. L. Taylor, Pisgah; E. J. Pallette, Pleasant Prairie; J. F. Porter, Rock Spring; T. E. Williams, Salem; H. T. Whitsett, Shaw; D. B. Brown, Shiloh; W. K. Morrow, Warrensburg; J. R. Kerr, Woods Chapel; J. G. Turk, Clinton; J. K. Gray, Montserrat; E. D. Johnson, Mt Carmel; J. E. Eberts, Mt. Zion; H. Boston, Providence; F. M. King, Little Blue.

Presbytery then adjourned to meet at 8:30 tomorrow morning in the Baptist Church at Rose Hill two miles east.

The closing prayer was offered by the Rev. S. H. McElvain.

53. The defendants offer in evidence from Minutes of Platte Presbytery of the Cumberland Presbyterian Church, June 1904, the roll of ministers, members of said Presbytery, being offered from page 617, said abstract of record, and being the first 8 lines of said page, as follows:

Ministers present—O. D. Allen, G. A. Blair, D. M. Boyer, W. C. Carter, R. H. Craig, S. T. Divinia, M. P. Elder, James Froman, A. W. Green, W. S. Harold, J. T. Hood, S. H. Murray, H. R. Norris, W. O. H. Perry.

Ministers absent—James Carter, H. W. Fisher, Martin Hughes, M. B. Irvine, L. Munkris, H. M. Richard, J. S. Wayman.

54. The defendants offer in evidence from the Minutes of McGee Presbytery of the Cumberland Presbyterian Church for March 9-10, 1906, the roll of ministers of said Presbytery, showing A. M. Buchanan and J. A. Poteet, to be ministers and members of same, being offered from page 618 of the said abstract of record last re-

ferred to, beginning with the 5th line of said page and ending with the 11th, as follows:

The roll was called and the following members were present:

Ministers—T. W. Baker, H. W. Berry, A. M. Buchanan, F. E. Haynes, D. E. McCurry, R. S. Maupin, T. G. Pool, J. A. Poteet, J. L. Routt.

Ministers absent—R. T. Caldwell (sick), J. T. Hallibutton, J. A. Ward.

55. The defendants offer in evidence from Minutes of Platte Presbytery of the Cumberland Presbyterian Church, September, 1906, showing the opening order and roll of ministers present, offered from page 619 of the printed abstract of record last above referred to, as follows:

The Platte Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment at Albany, Mo., Tuesday, September 18th at 8 o'clock p. m. The opening sermon was preached by Rev. James Froman; at the conclusion of which, and in the constitution of the present session, the Moderator declared that it would be constituted as the Platte Presbytery of the Presbyterian Church, U. S. A., whereupon the members of the Presbytery who opposed union with the Presbyterian Church, U. S. A., repaired to the Free Methodist Church, (which had been previously secured) where they duly and regularly constituted the Platte Presbytery of the Cumberland Presbyterian Church, the opening prayer being offered by Rev. C. W. Dunn of the Denton Presbytery of Texas Synod. Rev. S. H. Murray was chosen as Moderator and Rev. A. W. Green as stated Clerk.

ROLL CALL.

Ministers present—Revs. James Caster, A. W. Green, S. H. Murray, J. S. Wayman.

Licentiates present—A. S. McDaniel.

Absent—O. B. Lawliss, J. E. Courtner, Jesse E. Patton.

56. The defendants offer in evidence from the Minutes of the Synod of Missouri, October, 1905, at pages 3, 4 and 5 thereof, the roll of Presbyteries of said Synod of Missouri, as follows:

Chillicothe, Kirksville, Lexington, McGee, Neosho, New Lebanon, Ozark, Platte, St. Louis, Salt River, Springfield, West Plains, West Prairie.

57. The defendants offer in evidence from the Minutes of New Lebanon Presbytery of the Cumberland Presbyterian Church, March, 1906, the Roll Call of ministers at page 3 thereof, of said Presbytery, showing L. F. Clemens and P. McLuney to be ministers and 1 members thereof, as follows:

The roll was then called and is as follows:

Ministers present—W. H. Black, D. D.; T. J. Claggett, L. F. Clemens, C. H. Harrell, J. M. Hubbert, A. D. Johnston, P. McLuney, G. W. Mathis, J. W. Mitchell and T. P. Rice.

Ministers absent—R. D. Kennedy and R. L. Shepherd.

58. The defendants offer in evidence from the Minutes of New Lebanon Presbytery of the Cumberland Presbyterian Church, for

November, 1906, the Call therefor, the opening order and organization and roll call thereof, the enrollment of M. L. Clemens as a minister and member thereof, and the adjourning order, as follows:

The New Lebanon Presbytery of the Cumberland Presbyterian Church met pursuant to the following call at Otterville, Tuesday, November 14, 1906, at 7:30 p. m., October 28, 1906. The New Lebanon Presbytery of the Cumberland Presbyterian Church is hereby called to met at Otterville, Mo., November 14, 1906 at 7:30 p. m.

L. F. CLEMENS,
S. H. McELVAIN,
H. CLAY YATES.

Presbytery was opened with prayer by Rev. B. F. Logan of the Springfield Presbytery of the C. P. Church, after which the opening sermon was preached by Rev. L. F. Clemens from 1st Cor. 9-16.

On motion the name of Rev. Purviance McCluney, was placed on the roll of Presbytery.

The roll was called and the following ministers answered to their names—L. F. Clemens, S. H. McElvain, H. Clay Yates and Purviance McCluney.

Candidates present—Milton L. Clemens.

Congregations represented—Armstead, D. P. Finley; Centertown, Newton McKinney; Harmony, J. O. Davis; Hazle Grove, W. T. Riddle; Highland, C. C. Grooms; Elston, M. B. Jobe; Mt. Olive, W. D. Buck; Otterville, Dr. E. L. Rice; Pleasant Hill, T. W. King; Salt Fork, J. P. Marshall; New Zion, T. B. Anderson.

The following paper was adopted:

To the New Lebanon Presbytery—We the undersigned members of Presbytery have examined Milton L. Clemens on all those parts of trial necessary to licensure and recommend that he be licensed to preach as a probationer.

S. H. McELVAIN
W. D. BUCK,

On motion Milton L. Clemens was licensed to preach the gospel. Rev. Purviance McCluney was elected Moderator and Elder W. D. Buck, clerk pro tem.

The ordination sermon was preached by Dr. Yates as per announcement at the close of which Bro. M. L. Clemens was ordained.

The Rev. L. M. Clemens was invited to a seat in Presbytery, and the Clerk was instructed to place his name on the roll of ordained ministers.

Presbytery then adjourned to meet in Prairie Chapple Church at 7:30 p. m., Tuesday before the first Sunday in April, 1906.

59. The defendants offer in evidence from the Minutes of the General Assembly of the Cumberland Presbyterian Church, for 1906, from the Presbyterial directory and the roll of ministers by Presbyteries, at page 159a, thereof, under heading 79, Ozark, Missouri Synod, ministers, the names W. E. Shay, in the 15th line and the name I. V. Stines in the 19th line, showing them to be members of said Presbytery and Synod, as follows:

15. W. E. Shaw.
19. L. V. Stines.

60. The defendants offer in evidence from the same Minutes last referred to, at page 162a, thereof, under heading, 96, Springfield Missouri Synod, ministers, the name T. C. Newman, in the 11th line thereof, as follows:

11. T. C. Newman.

61. The defendants offer in evidence from the same Minutes last referred to, at page 155a, thereof, under heading McGee Missouri Synod Ministers A. M. Buchanan in the 3rd line and J. A. Poteet, in the 10th line, as follows:

3. A. M. Buchanan.

10. J. A. Poteet.

62. The defendants offer in evidence from the same Minutes last referred to, at page 158a, thereof, under heading 74, New Lebanon, Missouri Synod, ministers, the names L. F. Clemmens, in the 3rd line thereof, and the name P. McLuney in the 8th line thereof, as follows:

3. L. F. Clemmens.

8. P. McLuney.

63. The defendants offer in evidence from the same Minutes last referred to at page 154a, thereof, under heading 51, Lexington, Missouri Synod, ministers the name S. H. McElvain in the 14th line thereof, and G. W. Petty, in the 18th line, as follows:

14. S. H. McElvain.

18. G. W. Petty.

64. The defendants offer in evidence from the same Minutes last referred to, at 160a, thereof, under heading 82, Platte, Missouri Synod, ministers, the name A. W. Green, in the 7th line thereof, as follows:

7. A. W. Green.

W. R. Slaughter, Salisbury, Mo., 2 years.

64a The defendants offer in evidence the roll of ministers by Presbyteries members of Missouri Synod of the Cumberland Presbyterian Church from Minutes of said Synod for 1912, as follows:

SYNODICAL DIRECTORY.

Presbytery

Rev. A. J. Baker, Marshall, Mo.	New Lebanon
Rev. J. H. Barnett, Unknown	Springfield
Rev. F. P. Baxter, Centerview, Mo.	Lexington
Rev. John Bell, Chesapeake, Mo.	Ozark
Rev. S. D. Bell, Grimes, Mo.	Springfield
Rev. R. D. Benson, Kennett, Mo.	West Prairie
Rev. A. C. Biddle, Warrensburg, Mo.	Lexington
Rev. J. M. Birdwell, Patterson, Mo.	West Prairie
Rev. J. A. Bozarth, Clinton, Mo.	West Prairie
Rev. T. J. Brasswell, Alton, Mo.	West Plains
Rev. M. F. Brower, Hamburg, Iowa	Platte
Rev. A. M. Buchanan, Moberly, Mo.	McGee
Rev. C. D. Cartner, Pleasant Hope, Mo.	Springfield
Rev. G. T. Carr, Greenfield, Mo.	Ozark

Presbytery

Rev. James Caster, Albany, Mo.	Platte
Rev. D. W. Cheek, Miller, Mo.	Ozark
Rev. J. F. Clarke, Springfield, Mo.	Springfield
Rev. L. F. Clemens, Marshall, Mo.	New Lebanon
Rev. W. L. Collins, Watson, Mo.	Platte
Rev. D. A. Collins, Lucas, Kan.	Ozark
Rev. J. E. Cortner, Marshall, Mo.	New Lebanon
Rev. J. L. Coy, Gibson, Mo.	West Prairie
Rev. J. F. Daugherty, In Okla.	Ozark
Rev. Joseph Davis, Mansfield, Mo.	Springfield
Rev. D. B. Dilley, West Grove, Iowa	Iowa
Rev. E. R. Duggins, Nevada, Mo.	Ozark
Rev. Y. W. Durrett, Campbell, Mo.	West Prairie
Rev. J. W. Duvall, Salisbury, Mo.	McGee
Rev. W. J. Garrett, Springfield, Mo.	Ozark
Rev. R. E. Garrison, Lamar, Mo.	Ozark
Rev. J. S. Grabiell, Campbell, Mo.	West Prairie
Rev. A. W. Green, 3106 Felix St., St. Joseph, Mo.	Platte
Rev. J. T. Halliburton, Meadow, S. Dakota	McGee
Rev. W. A. Hester, Trenton, Tenn.	West Prairie
Rev. R. M. Hudson, Knobnoster, Mo.	Lexington
Rev. F. C. Hughes, Fayetteville, Mo.	Lexington
Rev. G. T. Jeffers, Lamar, Mo.	Ozark
Rev. J. T. Jones, Everton, Mo.	Ozark
Rev. W. S. Kincaid, Cover d'Alene, Idaho	West Plains
Rev. E. T. King, Cull, Mo.	West Plains
Rev. O. B. Lawless, Easton, Mo.	Platte
Rev. R. L. Hayman, New London, Iowa	Iowa
Rev. W. M. Lewis, Bradley, Mo.	West Plains
Rev. C. R. Matlock, Odessa, Mo.	Lexington
Rev. R. S. Maupin, Marceline, Mo.	McGee
Rev. P. McCluney, Walnut Grove, Mo.	Springfield
Rev. S. H. McElvain, Marshall, Mo.	Lexington
Rev. A. B. Moore, Springfield, Mo.	Springfield
Rev. S. H. Murray, Lone Pine, Montana	Platte
Rev. T. C. Newman, Lamar, Mo.	Ozark
Rev. G. A. Owens, Gibson, Mo.	West Prairie
Rev. H. O. Parish, Mountain View, Mo.	West Plains
Rev. J. A. Poteet, Huntsville, Mo.	McGee
Rev. G. W. Petry, Montrose, Mo.	Lexington
Rev. J. M. Ragan, Tina, Mo.	Platte
Rev. R. S. Ramsey, Greenfield, Mo.	Ozark
Rev. J. L. Route, Huntsville, Mo.	McGee
Rev. J. A. Russell, Hartsville, Mo.	Springfield
Rev. J. M. Russell, Sedalia, Mo.	New Lebanon
Rev. B. L. Scroggs, Unknown	Ozark
Rev. W. E. Shaw, Greenfield, Mo.	Ozark
Rev. E. B. Smith, Memphis, Mo.	McGee
Rev. C. C. Schmidt, Cor. 16th and Mo. Ave. Sedalia, Mo., Lexington	
Rev. L. H. Smith, Unknown	Ozark
Rev. G. E. Turner, Kingsville, Mo.	Lexington
Rev. E. L. Uptegrove, Alvo, Neb.	Iowa

Presbytery

Rev. A. Vanausdel, Chapel Hill, Mo.	Lexington
Rev. J. S. Wayman, Albany, Mo.	Platte
Rev. L. L. Whitehead, Centertown, Mo.	New Lebanon
Rev. R. W. Williams, Aurora, Mo.	Ozark

LICENTIATES.

Rev. William Burney, Manes, Mo.	Springfield
Rev. A. E. Covington, Rogersville, Ala.	West Prairie
Rev. C. C. Cox, Marshall, Mo.	New Lebanon
Rev. C. F. McCurry, Moberly, Mo.	McGee
Rev. T. J. Shearon, Keytesville, Mo.	McGee
Rev. W. M. Tomson, Armstrong, Mo.	McGee
Rev. S. F. Williams, Clinton, Mo.	Lexington

CANDIDATES.

Rev. Hylas Holt, McKenzie, Tenn.	Ozark
Rev. A. T. Moore, Downing, Mo.	McGee
Rev. Byron Lasswell, Hollywood, Mo.	West Prairie
Rev. Hal Liggett, Blue Springs, Mo.	Lexington
Rev. E. O. Wolk, McKenzie, Tenn.	Lexington

64b. The defendants offer in evidence from the respective Minutes of the Synod of Missouri of the Cumberland Presbyterian Church, for the years of 1907, 1908, 1909, 1910, 1911 and 1912, the respective opening orders, roll call of presbyteries and members present together with the adjourning orders of the respective sessions of said Synod, for said years, as follows:

MINUTES, 1907.

Pursuant to adjourning order the Synod of Missouri of the Cumberland Presbyterian Church convened for its twenty-third annual meeting in the tabernacle near South Greenfield, Mo., on Tuesday, July 10, 1907, at 8 p. m.

The Synod was opened with prayer by Rev. J. M. Ragan. The retiring Moderator, J. W. Duvall, preached the opening sermon from Jeremiah 6:16.

Elder G. W. Freeman of Mansfield, Mo., presented the Synod with a beautiful gavel, made in Jerusalem of olive wood.

Roll Call.

(This list includes those who come in after the opening)

Lexington Presbytery, Ministers Present—Rev. E. R. Duggins, Rev. S. H. McElvain, Rev. Hugh S. McCord, Rev. G. W. Petty, Rev. H. Clay Yates, D. D.

Congregations Represented—Elder W. E. Bundy, Montrose; Elder J. W. King, Clinton; Elder N. M. Irvin, Shiloh; Elder W. T. Mann, Nevada; Elder James Richeson, Blue Springs; Elder H. T. Whitsett, Shaw's Chapel; Elder James Horn, Edenview; Elder T. J. Summers, Warrensburg.

McGee Presbytery Ministers Present—Rev. A. M. Buchanan, Rev. J. W. Duvall.

Congregations Represented—Elder A. P. Brook, Salem; Elder H. A. Manning, Grand Prairie; Elder O. G. Dameron, Bethany; Elder W. R. Slaughter, Salisbury.

Ozark Presbytery Ministers Present—Rev. J. F. Dougherty, Rev. G. T. Jeffers, Rev. R. S. Ramsey, Rev. I. V. Stines, Rev. W. E. Shaw, Rev. J. T. Jones.

Congregations Represented—Elder S. E. Brown, Berwick; Elder M. L. Caff, Hopewell; Elder S. W. Cox, South Greenfield; Elder J. W. Davenport, Maple Grove; Elder Wm. Heagerty, Auroa; Elder Wm. Patterson, Central; Elder George Ragan, Bethel; Elder W. E. Scott, Greenfield; Elder Robert Montgomery, Concord; Elder J. M. Potts, Buarington Creek; Elder A. A. Young, Springriver; Elder J. E. Vandiver, Milford.

New Lebanon Presbytery Ministers Present—Rev. L. F. Clemens.

Congregations Represented—Elder A. Peecher, Marshall; Elder J. R. Shacklett, Prairie Chapel.

Springfield Presbytery Ministers Present—Rev. T. C. Newman, Rev. M. F. Wells, Rev. F. C. Hughes.

Congregations Represented—Elder G. W. Freeman, Manfield; Elder W. F. Steel, Wilson.

Platte Presbytery Ministers Present—Rev. A. W. Green.

Presbyteries not Represented—Kirksville, Chillicothe, Salt River West Plains, West Prairie and St. Louis.

Synod adjourned to meet with the Bethany congregation near Keytesville, Mo., in McGee Presbytery. Time—Tuesday before the third Sunday in October, 1908, at 8 o'clock p. m.

MINUTES, 1908.

Pursuant to adjourning order the Synod of Missouri of the Cumberland Presbyterian Church convened for its twenty-fourth annual meeting with the Bethany congregation near Keytesville, Mo., on Tuesday, October 13, 1908, at 8 o'clock p. m.

The Moderator being absent the Stated Clerk called Synod to order.

Opening prayer by Rev. B. F. Logan.

Answer to Roll Call: Lexington Presbytery, Rev. S. H. McElvain. McGee Presbytery, Rev. J. W. Duvall. Congregation, Bethany, Elder O. G. Dameron. Ozark Presbytery, Rev. T. C. Newman. Platte Presbytery, Rev. A. W. Green. Springfield Presbytery, Rev. B. F. Logan.

Presbyteries not represented. New Lebanon, West Prairie and West Plains.

Synod adjourned to meet in the M. E. Church South in Keytesville, Mo., Tuesday, October 13, 1908, at 9:00 o'clock p. m.

Prayer and benediction by Rev. J. W. Duvall.

Keytesville, Mo., Tuesday, October 13, 1908, 9 p. m.,

Synod convened. Opening prayer by Rev. T. C. Newman.

The following brethren appeared in Synod and names enrolled Lexington Presbytery, Rev. George W. Petty. Congregations represented: Chapel Hill, Elder J. M. Barnett. Shaw's Chapel, Elder H. T. Whitsett. McGee Presbytery, Rev. A. M. Buchanan, Rev. J. L. Routt. Congregations represented, Huntsville, Elder J. C. Jenkins. Medill, Elder A. S. Harkness. Prairie Hill, Elder B. H.

Richardson. Sharon, Elder R. C. Wayland. New Harmony, Elder J. M. Collins. Mt. Carmel, Elder F. R. McDaniel. Gorin, Elder J. H. Trent. Salem, Elder G. W. Creed. Corinth, Elder J. L. Mason. New Lebanon Presbytery, Rev. L. F. Clemens, Rev. J. E. Cortner and Rev. A. J. Baker.

Congregations represented: Mt. Olive, Elder W. D. Buck. Hazel Grove, Elder W. T. Riddle.

Ozark Presbytery, Rev. Ben Watts.

Congregations represented: Spring River, Elder F. S. Gatton.

Platte Presbytery, Rev. S. H. Murray.

Congregations represented: Birming, Elder A. J. Ferrell.

West Prairie Presbytery, Rev. J. A. Bozarth.

Synod adjourned to meet at Pertle Springs, Missouri, August 24, 1909, at 8 o'clock p. m. Adjourning prayer by S. H. McElvain.

MINUTES, 1909.

Pursuant to adjourning order the Synod of Missouri of the Cumberland Presbyterian Church convened for its Twenty-fifth Annual Meeting at Pertle Springs, Mo., on Tuesday, August 24, 1909, at 8 o'clock p. m.

Opening Exercises.

Synod opened by singing, "Come Thou Fount of Every Blessing" with the constituting prayer by Rev. Hugh S. McCord.

Rev. J. E. Cortner, retiring Moderator, preached the opening sermon. Subject: "Christian Unity". Text 1 Cor., 12th chapter and 25th verse.

Roll Call.

Lexington Presbytery.

Ministers Present—Revs. E. R. Duggins, S. H. McElvain, Hugh S. McCord, Geo. W. Petty and W. S. Winkler.

Congregations Represented—Edenvew, J. V. Cook; Shawnee Mound, Wm. Hinton; Pisgah, J. L. Taylor; Woods Chapel, J. R. Kerr; Blue Springs, James Richerson; Mt. Hebron, C. F. Jeans; Mt. Moriah, P. H. Culp; Mt. Zion, Wm. Warnick; Warrensburg, J. L. Roberts; Salem, T. E. Williams; Rock Springs, J. T. Porter; Centerville, Joseph McMillan; Shaws Chapel, H. T. Whitsett; Chapel Hill, J. M. Barnett; Shiloh, N. M. Irwin.

M'Gee Presbytery.

Ministers Present—Revs. A. M. Buchanan, J. W. Duvall.

Congregations Represented—Moberly, L. A. Cunningham; Mt. Carmel, F. R. McDaniel.

New Lebanon Presbytery.

Ministers Present—Revs. J. E. Cortner, P. McCluney, A. J. Baker and L. F. Clemens.

Congregations Represented—Hazel Grove, W. T. Riddle; Mt. Olive, W. D. Buck; Armstead, D. P. Finley.

Ozark Presbytery.

Minister Present—Rev. Ben Watts.

Congregation Represented—Central, Wm. Patterson.

Platte Presbytery.

Ministers Present—Revs. A. S. McDaniels and A. W. Green.

Springfield Presbytery.

Ministers Present—Revs. B. F. Logan and F. C. Hughes.

Congregation Represented—Mansfield, G. W. Freeman.

West Prairie Presbytery not represented.

Synod adjourned to meet at Pertle Springs, Mo., in August, 1910, day to be selected by Commission.

Closing prayer, by Rev. J. W. Duvall. Prayer and benediction by Rev. J. H. Milholland.

MINUTES, 1910.

Pursuant to adjourning order, the Synod of Missouri of the Cumberland Presbyterian Church convened for its twenty-sixth annual Meeting at Pertle Springs, Mo., on Thursday, August 18, 1910, at eight o'clock p. m.

Opening Exercises.

Synod was opened with prayer by Rev. J. E. Cortner, retiring Moderator.

Rev. J. W. Duval preached the opening sermon. Text: Psalms 119, 129 verse.

Roll Call.

Lexington Presbytery.

Ministers—Revs. S. H. McElvain, F. C. Hughes, W. S. Winkler and G. W. Petty.

Congregations Represented—Mt. Zion, W. S. Warnick; Rock Springs, J. L. Porter; Pisgah, S. A. Catline; Shaw's Chapel, H. T. Whitsett; Odessa, A. L. Wilcoxon; Pleasant Prairie, R. C. Mabry; Chapel Hill, L. X. Anderson; Shawnee Mound, F. W. Crooks; Warrensburg, T. J. Summers; Oak Grove, W. J. Swetnam.

McGee Presbytery.

Ministers—Revs. A. M. Buchanan and J. W. Duvall.

New Labanon Presbytery.

Ministers—Revs. J. E. Cortner, L. F. Clemens and A. J. Baker. Congregations Represented—Armstead, D. P. Finley.

Ozark Presbytery.

Ministers—Rev. T. C. Newman.

Platte Presbytery.

Ministers—Rev. A. W. Green.

Springfield Presbytery.

Ministers—Revs. Joseph Davis and D. W. Cheek.

West Prairie Presbytery.

Ministers—Rev. J. A. Bozarth.

Synod adjourned to meet at Pertle Springs, Mo., on Tuesday evening at eight o'clock before the fourth Sunday in August, 1911.

Closing prayer, by Rev. A. M. Buchanan.

MINUTES, 1911.

Pursuant to adjournment the Synod of Missouri of the Cumberland Presbyterian Church, convened at Pertle Springs, August 22, 1911, at 8 p. m.

Opening Exercises.

Rev. T. C. Newman, of the Ozark Presbytery, preached the opening sermon. Text, Heb. 2.6. After which Synod was opened with prayer.

Roll Called.

Lexington Presbytery, Revs. F. C. Hughes, S. H. McElvain, A. B. Biddle, F. P. Baxter, J. M. Russell, and G. E. Turner.

Congregations Represented.

Pisgah, S. A. Catlin; Mt. Serat, M. R. Neal; Mt. Zion, Wm. Warnick; Centerview, S. B. Graham; Chaplehill, J. M. Barrett, Mt. Hebron, John Keith; Odessa, A. L. Wilcoxon; Bethel, J. E. Foster; Woods Chapel, Jno. R. Kerr; Warrensburg, J. W. Bear; Rock Springs, J. F. Porter.

McGee.

Revs. A. M. Buchanan, J. W. Duvall, J. A. Potett.
 Congregations Represented—Bethany, O. G. Dameron.
 New Lebanon—Revs. L. F. Clemmens, J. E. Cortner.
 Ozark—Rev. T. C. Newman.
 Platt—Rev. A. W. Green.

Not Represented—Springfield, West Plains, West Prairie.

On motion Synod adjourned, to meet in Campbell, Missouri, Friday at 8 o'clock p. m. before the third Sunday in August, 1912.

MINUTES, 1912.

The Synod of Missouri of the Cumberland Presbyterian church met pursuant to adjournment in the Cumberland Presbyterian church at Campbell, Missouri, August 16th, 1912, at 8 o'clock p. m.

Opening Services.

The Synod was opened with prayer by Rev. J. W. Duvall, of the McGee Presbytery, after which the opening sermon was delivered by the retiring Moderator, Rev. J. M. Russell, of the New Lebanon Presbytery from Hebrews 12:12,

The Stated Clerk being absent, Rev. W. Y. Durrett was requested to fill his place.

Roll Call.

The roll was called by Presbyteries and the following were found to be present: (Names preceded by figure 2 were enrolled on second day.)

Lexington Presbytery.

Ministers—S. H. McElvain, C. C. Schmidt.

Elders—J. E. Eberts, Mt. Zion; J. McMillan, Center View; R. C. Mabry, Pleasant Prairie; H. T. Whitsett, Shaw's Chapel.

McGee Presbytery.

Ministers—A. M. Buchanan, J. W. Duvall.

New Lebanon Presbytery.

Minister—J. M. Russell.

Iowa Presbytery.

Minister—D. B. Dilley.

West Prairie Presbytery.

Ministers—J. A. Bozarth, J. S. Grabel, R. D. Benson, W. Y. Durrett, (2) G. A. Owens.

Elders—J. R. Wilson, Malden; C. D. Alexander, Campbell; (2) Thomas McFarlin, Cainan; G. H. Cain, Belgrade; (2) J. M. Cook, Dexter.

Presbyteries Not Represented—Ozark, Platte, Springfield and West Plains.

On motion by Rev. J. W. Duvall, the Synod adjourned to meet in Sedalia, Missouri on Thursday before the Fourth Sabbath in September, 1913, at seven thirty o'clock p. m. The closing prayer was offered by Rev J. W. Duvall, of McGee Presbytery.

64c. The defendants offer in evidence from the Minutes of the Springfield Presbytery of the Cumberland Presbyterian Church, for March, 1906, showing the roll call of Ministers who were members present, and also the congregations represented, as follows:

J. T. Bacon, J. H. Barnett, W. J. Bruce, Joseph Davis, J. E. Doran, W. C. Hick, T. C. Newman, J. A. Russell, J. E. F. Robertson, M. F. Wells. Licentiates present: F. C. Hughes and S. S. Odell.

Congregations—Barren Creek, Brookline, Competition, Happy Home, Hazel Dell, Mansfield, Mt. Comfort, Mt. Dale, Mt. Home, Mt. Moriah, New Providence, Pireson, Pleasant Divide, Pleasant Grove, Pleasant Home, Pleasant Valley, Ross Chappel, Seymour, Springfield First Church, Springfield Ave., Walnut Grove, Walnut Spring, White Oak, and Wilson Creek.

64d. The defendants offer in evidence from the respective Minutes of the Springfield Presbytery of the Cumberland Presbyterian Church, for October, 1906, and March 1909, the respective opening orders and roll of Ministers present, and congregations represented for said sessions, as follows:

OCTOBER, 1906.

Pursuant to adjournment order, Springfield Presbytery of the Cumberland Presbyterian Church was convened in regular session with Seymour Congregation of the Cumberland Presbyterian Church, Seymour, Mo., on October 3, 1906, at 11 a. m. After song and prayer, led by Rev. J. H. Barnett, the opening sermon was preached by Rev. B. F. Logan, Text, Heb. 2:9; after which the roll was called and the following results were noted:

When the Moderator ordered the roll called the following named Brethren left the Church declaring by that act that they were in the Presbyterian Church of U. S. A.—Rev. J. T. Bacon, W. J. Bruce, J. H. Doran, A. J. Graves, W. C. Hicks, J. E. F. Robertson, G. W. Plummer, J. A. McCroskey and Licentiate, J. C. Bigbee.

The following named Brethren answered present to the roll call.—Ministers: Barnett, J. H.; Davis, Joseph; Moore, A. B.; Newman, T. C.; Royer, D. F.; Russell, J. A.; Wells, M. F.; Logan, B. F.; and Licentiates: Hughes, F. C.; and Odell, S. S.

The congregations represented were as follows:

Barren Creek, L. Hughes, days present, two.
 Competition, John Reed, days present, two.
 Happy Home, Wm. Miller, days present, two.
 Hazel Dell, S. S. Odell, days present, two.
 Mansfield, John Brentlinger, days present, two.
 Mt. Dale, Jesse Foster, days present, two.
 Phillipsburg, John Smith, days present, two.
 Pierson, T. C. Hudson, days present, two.
 Pleasant Grove, R. L. Longerier, days present, two.
 Pleasant Hope, M. H. Cochran, days present, two.
 Pleasant Valley, George Blevins, days present, two.
 Ross' Chapel, John Gateley, days present, two.
 Seymour, John Freeman, days present, two.
 Walnut Springs, H. T. Kelso, days present, one.

White Oak Pond, W. C. Dyren, days present, two.
Wilson Creek, W. F. Steele, days present, two.

MARCH AND APRIL, 1909.

Pursuant to adjournment order, Springfield Presbytery of the Cumberland Presbyterian Church was convened in regular session with the First Cumberland Presbyterian Church of Springfield, Missouri, on March 31, 1909, at 7:30 p. m.

Roll Call.

Ministers Present: Davis, Joseph; Hughes, F. C.; Logan, B. F.; Russell, J. A.; Turner, G. E.; Wells, M. F.

Ministers Absent: Barnett, J. H.; Moore, A. B.

Licentiates: S. S. Odell, absent.

Candidates: E. T. King, present.

Congregation Represented. Barren Creek, J. M. Fotts; Happy Home, W. F. Miller; Mt. Comfort, W. W. Dysart; Mansfield, G. W. Freeman; Pleasant Hope, M. E. Cowden; Pierson, T. C. Hudson; Pleasant Valley, Thos. Rosevear; Ross Chapel, H. J. Trantham; Springfield, First, V. N. Bray; Wilson Creek, W. F. Steele; White Oak Pond, W. C. Druen.

64e. Defendants offer in evidence from the respective Minutes of the Lexington Presbytery of the Cumberland Presbyterian Church, for March, 1906, September, 1906, and April, 1909, the respective opening orders, and roll of Ministers present and congregations represented, at said respective sessions as follows:

MARCH, 1906.

Roll of Ministers found at offer 51.

ORGANIZATION.

Ruling Elders:

R. L. Evans	Bates City.
L. W. Estes	Bethel.
W. R. Phipps	Blairstown.
B. F. Moon	Butler.
D. F. Broden	Centerview.
J. W. Miller	Chalk Level.
A. C. Green	Chapel Hill.
J. C. Cully	Chilhowee.
W. R. Rice	Columbus.
E. A. Porter	Corinth.
G. B. McLead	Field's Creek.
S. H. Lynn	Freeman.
I. A. Harvey	Harrisonville.
E. Andnes	Holden.
Lewelwyn Jones	Independence.
Q. W. Houston	Kansas City, 1st.
J. M. Overstreet	Kansas City, 1st.
L. A. Godman	Westport.
G. T. Gallaher	Knobnoster.
J. L. Fiebuck	Lotour.
T. L. DesCambs	Luton.
J. E. Smiley	Morose.
Geo. Callaway	Lexington

Wm. Drysdale	Mt. Moriah.
Ely Moss	Nevada.
W. M. Kennedy	New Hope.
Chas. Taggart	New Liberty.
J. Sulinger	New Prospect.
T. R. Tayler	Odessa.
S. W. Ramsey	Peculiar.
J. W. Taylor	Pisgah.
A. L. Faulwell	Pleasant Grove.
J. T. Renwick	Pleasant Prairie.
Albert Hamilton	Rock Springs.
T. E. Williams	Salem.
H. T. Whitsett	Shaw.
C. C. Ridley	Shawnee Mound.
N. M. Irwin	Shiloh.
W. A. Eads	Spencer.
R. F. Borron	Strosburg.
E. B. Huey	Urich.
J. M. Shelton	Walnut Grove.
C. A. Boyles	Warrensburg.
J. R. Kerr	Woods Chapel.
Congregations not represented: Baker, Belton, Blue Springs, Clinton, Ellis, Fair Haven, Montsinatt, Mt. Carmel, Mt. Zion, Oak Grove, Pleasant Ridge, Providence, Richards, Spring Grove, Walnut.	

September, 1906, found under offer 52.

APRIL, 1909.

Lexington Presbytery of the Cumberland Presbyterian church met pursuant to adjournment at Montrose, Henry county, Missouri, April 3, 1909, at 11 o'clock, a. m. The opening sermon was preached by the Moderator, Rev. G. W. Petty. The constituting prayer was offered by Rev. W. S. Winkler.

The roll was called and the following ministers answered present: C. K. Carlock, E. R. Duggins, S. H. McElvain, Hugh S. McCord, G. W. Petty and W. S. Winkler. Candidate, S. M. Thompson.

Congregations Represented: Centerview, by Joseph McMillan; Clinton, by J. G. Turk; Fields Creek, by Frank Taylor; Holden, J. B. King; Hopewell, W. A. Gates; Montrose, J. D. Mann; Mt. Hebron, Wm. Drysdale; Mt. Moriah, C. H. Phillips; Nevada, J. E. Roberts; Pisgah, S. A. Catlin; Pleasant Grove, A. L. Faulwell; Pleasant Prairie, R. C. Mabry; Shawnee Mound, Wm. Hinton; Providence, Mrs. M. A. Fulton; Warrensburg, W. K. Morrow; Woods Chapel, J. R. Kerr; Bates City, R. L. Evans; Montserrat, G. M. Gillum; Surprise, J. R. Witherspoon.

67f. Defendants offer in evidence from the respective Minutes of New Lebanon Presbytery of the Cumberland Presbyterian Church, for March, 1906, and March, 1909, the respective opening orders, and roll call of Ministers present and congregations represented at such sessions, as follows:

MARCH, 1906.

The New Lebanon Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment in the Cumberland Presbyterian Church, of Marshall, Saline County, Missouri, March 13th, 1906, at 7:30 p. m., in its one hundred and forty-third regular session.

A Scripture lesson was read by Rev. W. H. Black, D. D., followed with prayer by Rev. C. H. Harrell.

Congregations Represented.

Armstead by D. P. Finley; Bethel by J. W. McFarland; Bunce-ton by C. E. Floyd; Centertown by J. W. McKinney, Elston by M. B. Job; Hardeman by T. J. Davis; Hazel Grove by W. T. Riddle; Highland by C. C. Groom; Marshall by W. K. Mahard; Moreau by W. D. Buck; Mt. Vernon by W. A. Scott; New Hope by Ewing Kenney; New Lebanon by R. D. Cordry; New Salem by W. F. Johnston; New Zion by T. B. Anderson; Otterville by J. M. Bente; Pleasant Hill by J. R. Cordry; Prairie Chapel by G. W. Thornton; Salt Fork by J. P. Marshall; Sedalia by J. L. Griffith; Stony Point by W. B. Homan. W. A. Alexander from Heath Creek came in during the afternoon.

NOVEMBER, 1906.

(Copied at page..... of this record and omitted here.)

MARCH, 1909.

New Lebanon Presbytery of the Cumberland Presbyterian Church, met with the Mt. Olive congregation in Mt. Olive Church in Saline County, Mo., at 7:30 p. m., March 26th, 1909.

Rev. J. E. Cortner, retiring Moderator, preached the opening sermon from John 4-24. Subject: True Worship.

Rev. A. M. Buchanan, of McGee Presbytery, led in constituting prayer. The roll was then called and the following answered to their names: Ministers, Revs. L. F. Clemens, J. E. Cortner, L. L. Whitehead and A. J. Baker. Congregations were represented as follows: Harmony—C. C. Kitchen; Hazel Grove—J. H. Clark; Elston—M. C. Jobe; Moreau—B. M. Ivy; Marshall—Dr. G. E. Scrutchfield; Mt. Olive—A. E. Larue; Otterville—L. W. Hupp; Pleasant Hill—J. R. Cordrey; Prairie Chapel—G. W. Thornton; Union—R. B. Howe.

64g. Defendants offer in evidence from the Minutes of Platte Presbytery of the Cumberland Presbyterian Church, for June, 1903, the roll of Ministers and Congregations of said Presbytery, as follows:

Ministers Present—G. A. Blair, S. T. Divinia, W. O. H. Perry.

Ministers Absent—O. D. Allen, D. M. Boyer, W. W. Carhart, W. C. Carter, James Caster, H. W. Fisher, James Froman, A. W. Green, J. T. Hood, Martin Hughes, M. B. Irvine, Lafayette Munkirs, S. H. Murray, H. R. Norris, H. M. Richard, J. S. Wayman.

Congregations Represented—Birming—A. J. Ferrell; St. Joseph—L. H. Moss.

Congregations Not Represented—Agency, Albany, Barry, Albany, Barry, Bethany, Bethlehem, Dearborn, Easton, Elk Horn, Fairview, Faucett, Flag Springs, Green Valley, Harmony, Independence, Kink City, Liberty, Linkville, Maple Grove, McFall, Mt. Bethel, Mt. Carmel, Mt. Gilead, Mt. Pleasant, Mt. Zion, Osborn, Pleasant Ridge, Pleasant View, Pratherville, Rochester, Round Grove, Savannah, Shady Grove, Stewartsville, Tinney's Grove, Union Chapel, Watson, Weatherby, West Fork.

64h. Defendants offer in evidence from the respective Minutes of Platte Presbytery of the Cumberland Presbyterian Church, for September, 1906, and February, 1908, September, 1909, the respective opening orders, roll call of ministers present and congregations represented at each respective session as follows:

SEPTEMBER, 1906.

The Platte Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment at Albany, Mo., Tuesday, September 18th, at 8 o'clock, p. m.

ROLL CALL:

Ministers Present—Revs. James Caster, A. W. Green, S. H. Murray, J. S. Wayman.

Licentiates Present—A. S. McDaniel. Absent—O. B. Lawliss, J. E. Courtner, Jesse E. Patton.

Representatives—Birming congregation, A. J. Ferrell; Fairview congregation, H. H. Higgins; Faucett congregation, W. C. Rose; Independence congregation, G. W. Williams; Liberty congregation, Wm. Caster; Mount Bethel congregation, I. A. McRay; Union Chapel congregation, J. T. Varner; West Fork congregation, Joseph Simpson; Pleasant Ridge congregation, John Graves.

FEBRUARY, 1908.

MINUTES OF THE PRESBYTERY

Platte Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment in the C. P. Church at Faucett, Mo., 8 o'clock p. m., February 13, 1908.

The opening sermon was preached by Rev. D. H. McCall.

The opening prayer by Rev. S. H. Murray.

ROLL CALL

Ministers present—A. W. Green, O. B. Lawliss, S. H. Murray, D. H. McCall, J. M. Ragan, J. S. Wayman.

Ministers Absent—James Caster.

Licentiate—A. S. McDaniels.

Congregations represented—Agency by Joseph Smiley, Birming by A. J. Ferrell, Fairview by S. R. Gains, Faucett by W. D. Means, Independence by Dan Mark, Liberty by Andy Mount, Mt. Gilead by J. D. Phelps, Rochester by W. R. Nickols, Watson by W. H. Good, West Fork by J. W. Blake, St. Joseph by James Bigham.

64i. The defendants offer from Presbyterial Directory, Appendix 17, Minutes of General Assembly of the Cumberland Presbyterian

Church, for 1906, being roll of Ministers by Presbyteries of said Church, the names numbered 5, 8, 10, 11 and 13, under heading Ozark, Missouri Synod, Ministers, at page 159 a, thereof as follows:

5. J. F. Daughtrey.
8. G. I. Jeffers.
10. J. T. Jones.
11. C. G. McMahan.
13. R. S. Ramsey.

64j. The defendants offer in evidence from the respective Minutes of the Ozark Presbytery of Cumberland Presbyterian Church, for August, 1906, and March, 1909, the respective opening orders, Roll Call of Ministers and Congregations, for each respective session, as follows:

AUGUST, 1906.

The Ozark Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment with the New Bethel congregation at Dade County, Missouri, August 28, 1906, at 7:30 p. m.

The roll was called and the ministers answered to name: J. F. Daughtrey, G. T. Jeffers, J. T. Jones, C. G. McMahan, R. S. Ramsey, W. E. Shaw, and I. V. Stines.

Ministers absent. John Bell, D. Collins and W. J. Garrett.

Licentiates and candidates all absent.

Congregations Represented: Central, by Wm. Patterson; Duval, by S. T. McCune; Greenfield, by W. E. Scott; Hopewell, by M. L. Cass; Iantha, by J. W. McCrea; Maple Grove, by J. W. Davenport; Marionville, by G. W. Logan; Milford, by J. E. Vandiver; New Bethel, by Lester DeGood; Pleasant Ridge, by S. F. Hoover; Red Oak, by J. W. Manning; Salem, by John Hagler; South Greenfield, by T. A. Cox; Spring River, by A. A. Young.

Congregations not Represented: Aurora, Big Spring, Dadeville, Everton, Golden City, Mt. Carmel, Mt. Olivet, Mt. Vernon, Mt. Zion, New Hope, Oak Grove, Ozark, Ray Spring, Spring Creek, Stockton and Verona.

MARCH, 1909.

The Ozark Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment with the Aurora congregation, Aurora, Mo., March 12, 1909, at 7 o'clock p. m.

Roll call, and the following results noted: Ministers present, G. T. Carr, J. F. Daughtery, R. E. Garrison, G. T. Jeffers, J. T. Jones, W. E. Shaw, A. C. Snelson, Ben Watts and R. W. Williams.

Ministers absent: John Bell, J. F. Clark, D. A. Collins, W. J. Garrett and T. C. Newman.

Licentiates present: B. L. Scroggs.

Candidates absent: F. T. Grigsby.

Congregations represented: Aurora, by J. C. Winkler; Berwick by J. F. Hutchison; Big Spring, by J. W. Sutton; Central, by Wm. Patterson; Concord, by J. A. Keeling; Center Creek, by J. A. Whitaker; Greenfield, by W. E. Scott; Hopewell, by M. L. Cass; Iantha, by O. B. Slinker; Mapel Grove, by G. B. Greer; Marrs Hill, by Alford Hilton; Milford, by J. E. Vandiver; Mt. Zion, by Albert

Spain; Oak Grove, by C. W. Andrews; South Greenfield, by Roy McLemore and Spring River, by A. A. Young.

65. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church held at Louisiana and Montrose, Missouri, October 16-19th, 1906, that portion thereof found beginning with 19th line on page 624 of the printed abstract of record, Missouri Valley College et al., v. Guthrie et al., and continuing to the heading Ministerial Relief on page 633 of said record, as follows.

MISSOURI VALLEY COLLEGE.

Board of Trustees.

Rev. T. C. Newman, Pleasant Hope, Mo., 1 year.

G. W. Freeman, Mansfield, Mo., 1 year.

A. J. Ferrill, Faucett, Mo., 1 year.

Hon. J. E. Vandiver, 2 years.

C. H. Harrison, Warrensburg, Mo., 2 years.

W. R. Slaughter, Salisburg, Mo., 2 years.

Rev. J. W. Duvall, Madison, Mo., 3 years.

Hon. Matt Hall, Jefferson City, Mo., 3 years.

Robert Reynolds, Marshall, Mo., 3 years.

REV. J. W. DUVALL, Moderator.

REV. A. W. GREEN, Stated Clerk.

MINUTES OF THE SYNOD OF MISSOURI.

First Day, Tuesday—Evening Session.

Louisiana, Mo., Octo. 16th, 1906.

The Synod of Missouri of the Cumberland Presbyterian Church met in Louisiana, Mo., October 16, 1906, at 7:30 p. m. Rev J. C. Worley, the Moderator, being absent, the stated clerk called the Synod to order and announced that the Missouri Synod of the Cumberland Presbyterian Church adjourned to meet at this time and place, a quorum being present we would now constitute with prayer led by Bro. Bacon. A sermon was then preached by Bro. W. K. Howe by request of Moderator and an address of welcome by Dr. E. D. Pearson, responded to by Dr. W. H. Black, who while on the floor moved to adjourn to meet tomorrow at 8 a. m.

Rev. J. W. Duvall rose to a question of privilege and asked for the authority or right they had to constitute a Cumberland Presbyterian Synod as most of you have declared yourselves Presbyterians U. S. A., and renounced the communion of the Cumberland Presbyterian Church and become members of the Presbyterian Church, U. S. A. He was ordered to sit down, but he gave notice that a protest would be filed against the above action. The vote was rushed through while he was on the floor and the audience dismissed. Thus they refused to explain or answer the demand. Immediately after this Revs. J. W. Duvall and A. M. Buchanan of McGee Presbytery, Revs. S. H. McElvain and G. W. Petty of Lexington Presbytery, Rev. I. V. Stines of Ozark Presbytery and Rev. A. W. Green of Platte Presbytery, all of the Cumberland Presbyterian Church met,

and Rev. S. H. McElvain called the Synod of Missouri of the Cumberland Presbyterian Church to order and was opened or constituted with prayer by A. M. Buchanan.

On motion the following was adopted, viz.: Whereas, the former Moderator and stated Clerk of the Synod of Missouri of the Cumberland Presbyterian Church have now no legal or ecclesiastical authority to act officially or otherwise as members of the said Synod by reason of having renounced the communion of this church, and having gone into the Presbyterian Church, U. S. A., as shown by the published minutes of the Presbyteries to which they belong respectively; therefore, resolved, that we now fill the vacancies with Rev. J. W. Duvall of McGee Presbytery as Moderator pro tem and Rev. S. H. McElvain of Lexington Presbytery as clerk pro tem.

On motion Bro. McElvain, Buchanan and Duvall were appointed a committee to draft a protest against the action of those who had formerly been members of the Synod of Missouri of the Cumberland Presbyterian Church, U. S. A., and with said church are seeking to destroy the organization of the Cumberland Presbyterian Church and transfer her properties to the Presbyterian Church, U. S. A.

On motion the Synod adjourned, subject to the call of the Moderator. Prayer by Moderator.

Second Day—11:00 a. m.

Louisiana, Mo., Oct. 17, 1906.

The Synod of Missouri of the Cumberland Presbyterian Church was called to order and opened with prayer by the Moderator.

The following members were present: J. W. Duvall, I. V. Stines, A. W. Green, A. M. Buchanan, S. H. McElvain. H. Clay Yates of Lexington Presbytery came in and was enrolled.

The committee appointed to draft a protest reported that they had accomplished the matter referred to them and that they had filed it with the clerk of the Synod of Missouri of the Presbyterian Church, U. S. A., marked "A," and is as follows, viz.:

Louisiana, Mo., Oct. 27, 1906.

We, the undersigned members of the Synod of Missouri of the Cumberland Presbyterian Church, do hereby respectfully enter our solemn and emphatic protest against the action of those who were once members of the Cumberland Presbyterian Church, Synod of Missouri, for the following reasons:

First. Because you assumed to open or constitute the Missouri Synod of the Cumberland Presbyterian Church, having previously renounced the communion of said church, and declared your allegiance and connection with the Presbyterian Church, U. S. A., as the minutes of your various Presbyteries show.

Second. Because an individual cannot legally or constitutionally hold membership in two different churches at the same time, hence the Moderator or stated clerk had no authority to open the Synod of Missouri of the Cumberland Presbyterian Church, as these offices had become vacant because of the facts contained in the above preamble and reasons.

Third. Your program shows that you are transacting business as the Missouri Synod of the Presbyterian Church. See Rules of Disciple of the Cumberland Presbyterian Church, Sec. 66.

Signed by J. W. Duvall, S. H. McElvain, A. M. Buchanan, I. V. Stines, H. Clay Yates, A. W. Green.

The following resolution was adopted, viz.:

Whereas, the Synod opened last night as the Missouri Synod of the Cumberland Presbyterian Church and adjourned until this morning at 8:30 a. m.

And whereas, the records of the meeting last night as read by the stated clerk this morning stated that the Synod met in keeping with the adjourning order.

And whereas, at the roll call of the Synod the ministers of the Cumberland Presbyterian Church who had refused to recognize any authority of the Presbyterian Church, U. S. A., were denied recognition on the floor of the Synod, on the ground as claimed by the acting moderator, J. M. Hubbert, that they were not in good standing in the Presbyteries and their jurisdiction over them as well as the communion with the Presbyterian Church, U. S. A., their names had been dropped from the roll of the Presbyteries to which they belonged.

And whereas, the first business transacted after roll call was the adoption of a paper setting forth the fact that they recognized allegiance to the Presbyterian Church, U. S. A., by virtue of the action of the Decatur Assembly, and placed themselves on record as being the Synod of Missouri of the Presbyterian Church, U. S. A., marked "A."

Therefore, resolved, that this, the Synod of Missouri of the Cumberland Presbyterian Church, now in session, does reaffirm its allegiance to the Cumberland Presbyterian Church, and that we, the legal representatives of our respective Presbyteries and congregations in this Synod, do now reaffirm the fact that we have never at any time recognized any connection with or allegiance to the Presbyterian Church, U. S. A.

On motion Revs. H. Clay Yates and S. H. Mc Elvain of Lexington Presbytery were transferred to New Lebanon Presbytery.

On motion the Synod adjourned to meet at Mont Rose, October 17th, 1906 at 9.00 p. m.

Prayer and benediction by Bro. Yates.

Wednesday Eve—9:00 p. m.

The Synod of Missouri of the Cumberland Presbyterian Church met at Mont Rose, October 17th, 1906, at 9:00 p. m., and was opened with prayer by the moderator. The roll call revealed the following members present:

ROLL OF SYNOD.

Ministers—Lexington present—E. R. Duggins, G. W. Petty.

Congregations Represented—Pleasant Prairie, J. T. Renick; Providence, Henry Boston; Clinton, Dr. J. G. Turk; Mt. Zion, J. E. Roberts, 2; Mont Rose, James Smily and David Cordry, 2; Mt. Carmel, Eli D. Johnston, 2; Hopewell, Wm. Yates, 2; Fields Creek, Frank Taylor, 2.

The figure after name indicates day of enrollment.

Ministers—McGree Pres.—A. M. Buchanan, J. W. Duvall, I. A. Potee. Ozark Pres.—J. T. Clark, I. V. Stines, W. E. Shaw. New Lebanon Pres.—L. F. Clemens, S. H. McElvain, H. Clark Yates.

Congregations—Mt. Olive, W. D. Buck; Otterville, W. Hupp; Salt Fork, J. P. Marshall.

Ministers—Springfield Pres.—T. C. Newman, B. F. Logan, F. C. Hughes.

Congregations—Ross Chapel, J. S. Gately.

Ministers—West Plains Pres.—J. B. Clark. Platte Pres—A. W. Green.

The Moderator and Clerk elected to serve pro tem were made the permanent officers for this meeting of the Synod. On motion the Synod adjourned to meet tomorrow at 8 a. m.

Prayer and benediction by Rev. L. F. Clemens.

Thursday, October 18, at 8:00 a. m.

One-half hour spent in devotional exercises, conducted by Rev. P. McClemey.

The roll was called; members were all present except Brother Petty, who was excused.

Elder Eli D. Jackson of Mt. Carmel congregation of Lexington Presbytery came in and his name was enrolled. The moderator announced the following committees:

COMMITTEES.

Education—Revs. L. F. Clemens, T. C. Newman and Elders Dr. J. G. Turk, H. C. Yates and J. F. Clark.

Ministerial Relief—Rev. J. A. Poteet and Elder J. S. Gately.

Missions and Church Extension—Rev. I. V. Stines and Elders L. W. Hupp, J. T. Renick and Rev. W. E. Shaw.

Publication—Revs. H. Clay Yates, G. W. Petty and Elder J. E. Eberts.

Sabbath Observance—Rev. B. F. Logan and Elder Smiley.

Temperance—Rev. J. B. Clark and Elders W. D. Buck and Wm. Gates.

Sabbath Schools and Young People's Work—Rev. A. M. Buchanan, Elders J. P. Marshall and W. D. Cordry.

Judiciary and Overtures—Revs. H. C. Yates, T. C. Newman, A. M. Buchanan and Elders J. E. Eberts and J. W. Hupp.

The following resolutions was adopted:

Whereas, There has been a strong effort on the part of the so-called Unionists to merge the Cumberland Presbyterian Church into the Presbyterian Church, U. S. A.; and

Whereas, Said effort has utterly failed in its purpose and brought dissatisfaction, discord and division throughout the church; and

Whereas, The foregoing reached its culmination in our Synod at Louisiana, Mo., October 16, 1906, which resulted in the division of the Synod.

Therefore, be it resolved:

That this body does most heartily and unequivocally approve the action taken by the loyal Cumberland Presbyterians in saving and perpetuating the Synod of Missouri of the C. P. Church by proceeding to open a Cumberland Presbyterian Synod by electing officers to fill vacancies caused by the action of those who have gone out from us into the Presbyterian Church, U. S. A.

Be it further resolved:

That the action of the loyal delegates to the Synod of Missouri of the Cumberland Presbyterian Church, which met in Louisiana, Mo., October 16, 1906, at 7.30 p. m., be approved by the congregations of this Synod.

(Signed)

I. V. STINES,

A. W. GREEN.

Elder Wm. Gates of Hopewell congregation and H. F. Taylor of Fields Creek, both of Lexington Presbytery, came in and their names were enrolled.

Synod took recess until 2 p. m.

Afternoon, 2 p. m.

Synod resumed business. Rev. F. C. Hughes of Springfield Presbytery appeared and his name was enrolled.

Récess subject to call of moderator.

2:45 p. m., Synod resumed business.

67. The defendant offers in evidence from the same record above mentioned, the report of the Committee on Education and the adoption thereof, found on pages 639 to 641 of said abstract of record, as follows:

EDUCATION.

The report of Committee on Education was concurred in and recommendations adopted and is as follows:

To the Synod of Missouri of the Cumberland Presbyterian Church in Session at Montrose, Mo., Oct. 18th, 1906:

Your Committee on Education submit the following:

The Cumberland Presbyterian Church believes in education—it believes in an educated laity as well as an educated ministry—yet we do not think that education is absolutely essential to service acceptable to God. God has filled, led and blessed men who never entered a college, yet it is true that education is necessary to the best work, keeping in view the fact that it is absolutely necessary to effective work, that a man be filled by the Holy Spirit in order to succeed in any department of church work; yet we must educate, not to cope with other denominations, but to do the most effective work for our Lord and Master, Jesus Christ.

While it is gratifying to know that we have a college plant, located at Marshall, Mo., with an endowment of something over one hundred and fifty thousand dollars, known as the Missouri Valley College of the Cumberland Presbyterian Church, and is under the joint control of the Synods of Missouri and Kansas of the Cumberland Presbyterian Church, yet we are sorry to have to report that an attempt is being made by those who would destroy the autonomy of the Cumberland Presbyterian Church to divert the property and endowment of the aforementioned College into the hands of the Presbyterian Church, U. S. A. Against such action we have (see Minutes of Mo. Synod of Oct., 10-12, 1905, pages 37 and 38) and do protest, and further hold such an act to be void because in conflict with the constitution of the C. P. Church, Sec. 25.

In view of the fact that the Missouri Valley College is without a Board of Trustees as required by her charter, the former board having renounced its allegiance to the Synod of Missouri of the Cumberland Presbyterian Church.

Therefore, resolved: That this Synod, the Synod of Mo. of C. P. Church, appoint, and we do appoint, the following persons to be that board, with all the rights and privileges granted by the charter of the Missouri Valley College. For three years, Rev. J. W. Duvall, Robert Reynolds, Hon. Matt Hall; for two years, Hon. J. E. Vandiver, J. C. Harrison, W. R. Slaughter; for one year, Rev. T. C. Newman, A. J. Ferrell and G. W. Freeman.

L. F. CLEMENS,
J. G. TURK,
J. F. CLARK,
H. CLAY YATES, D. D.

On motion, the Synod adjourned to meet in South Greenfield at such time in July as arranged for by the Committee appointed.

67a. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church for the year of 1907, from the report of the Committee on Education, adopted by said Synod, found at page 653 of said printed abstract of record above mentioned, as follows:

As a denomination we have come to the parting of the ways in our educational work. We must decide that we will not only be loyal to the doctrines of our church, but to the institutions of the church. There is but one institution of learning under your care, namely, Missouri Valley College, which is now in possession of the trustees of the College, who were once members of the Cumberland Presbyterian church, have gone into that church, and will use their influence to turn the College over to that church, and since they failed to report to this Synod we recommend that you declare their office vacant and elect the following men as trustees of Missouri Valley College:

MINUTES OF PLATTE PRESBYTERY, RICHMOND, MO., AUG. 4, 1909.

67b. Defendants offer from Minutes of Platte Presbytery of the Cumberland Presbyterian Church for August, 1909, the opening order and roll thereof, as follows:

Platte Presbytery of the Cumberland Presbyterian Church met pursuant to adjournment at the Mount Pleasant Church, two miles and one-half north of Richmond in Ray County, Mo., Wednesday evening at 9 o'clock, p. m., before the second Sunday in August, 1909. The opening sermon was preached by the retiring moderator, Rev. S. H. Murray—Text Ps., 46-10.

Roll Call

Ministers Present:

Rev. M. F. Brower,
Rev. A. W. Green,
Rev. O. B. Lawless,
Rev. A. S. McDaniels,
Rev. S. H. Murray,
Rev. J. M. Ragan.

Ministers Absent:

Rev. James Castor.

Congregations Represented:

Faucett—J. H. Campbell

Fairview—H. H. Higgins

Harmony—Clarence Williams

Mt. Zion—J. W. Moore

Mt. Pleasant—W. R. Patton.

68. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church, for 1908, the report of the Committee on Education, found at pages 654 to 658 of the printed abstract of record last above referred to, as follows:

REPORT OF COMMITTEE ON EDUCATION.

Report was concurred in and recommendations adopted.

One of the great works of the church is the training of men and women in the school of Christ. Christian education embraces the laws of God, not only as taught in the Bible, but in nature and the history of the race. Religious education is the same guard of safe both civil and religious liberty. We can only infer by the past. The statesman attributes the continuance of our republic to the genius of our government, our power to enforce law and our profound respect for civil obligations. But history is proof that all profound respect for civil obligations belonged to Sparta and Venice, yet their glory is gone. History has furnished no exception to the rule, that national safety inheres in national virtue, in the correctness of the moral sentiment of the people, in the rectitude of the private life of the citizen and these are the results of Christian education.

In this country each citizen should have a clear perception of his political duties, a realization of this personal responsibility in the issues of every election, a manifest interest in the moral character of all public officials, such as he feels in the character of his pastor, and the teacher of his children. To create, develop and conserve such a conscience is the business of Christian schools and colleges. Paul says, "Knowledge puffeth up," and some one else has said, "Knowledge is power." It is however, a power for good or evil as it is, or is not, controlled by a religious education, which fills the mind with the noblest ideas of God, of personal responsibility, in the regeneration of the unit, in order to the regeneration of the mass and of future life. The great contest between the infidel and the Christian is whether education shall be secular or religious, and between the Papist and the church, is whether it shall be Roman or Protestant. The coming question then is which shall control the education of our youth? There never has been a time in the history of advanced education, when the character of the teaching, the things taught and the right kind of teacher were of such vital importance to Cumberland Presbyterians. It is axiomatic that the Cumberland Presbyterian Church must educate her sons and daughters in her own schools, if she would be loyal to herself and prevent a repetition of our present trouble. Our Missouri Valley College is now in the hands of men who are trying to transfer it into the hands of the Northern Presbyterian Church. As a matter

of fact, for years the denomination has made good places in her colleges for teachers who were hunting a job and were willing to become nominally Cumberland Presbyterians in order to get good paying positions. We trust that in the future it shall be the policy of every Cumberland Presbyterian school to man them with Cumberland Presbyterian teachers, that the denominational atmosphere and spiritual and religious ideals may be taught both by precept and example.

In view of the above facts, we are of the opinion that your Reverend body should arrange to push to a successful issue any suit in law or equity that should or may be brought, in an endeavor to secure any and all school properties, rights and franchises, that belong to the Synods of Missouri and Kansas. And whereas, the so-called Board of Missouri Valley College are diverting the property, assets and belongings of said Missouri Valley College into the Presbyterian Church U. S. A. and are now using the same in the interest of the said Northern Presbyterian Church, whose doctrines and polity are materially different from the doctrines and polity of the Cumberland Presbyterian Church, which is a flagrant violation of a sacred trust. Therefore, be it

Resolved, That the Board of Trustees of Missouri Valley College of the Cumberland Presbyterian Church have and possess all rights, powers, and privileges conferred by the charter of said school, under the laws of Missouri, and they are hereby directed by this Synod, to take, possess and hold all the property of said school, to which it, as such Board of Trustees, is entitled.

The said Board of Trustees of Missouri Valley College is hereby authorized and empowered and directed to take any and all steps, legal or equitable, that may be necessary for obtaining and continuing in the control and management of said Missouri Valley College, and its properties, franchises and rights.

That this synod, now at this meeting, take all necessary steps for the raising of an expense fund of not less than \$1,200.00 in cash for the uses and purposes of said Board of Trustees, in retaining counsel and other matters found necessary to be done by said Board in looking after the recovery, control and management of said school, including the real estate and endowment.

Resolved further, That we recommend that Rev. T. C. Nowman be appointed to succeed himself as a Trustee, and that B. T. Garst be appointed to succeed Hugh Hayes, and G. W. Lankford succeed R. M. Reynolds as members of said Board of Trustees.

We recommend that this board proceed at once to raise a sum of not less than \$1,200.00, as mentioned above, to be used as expense fund, and that the ministers and clerks of sessions be requested to take steps to raise said fund, and that D. L. Cooper of Marshall, Mo., be appointed Treasurer of said Board until the meeting of the Board of Trustees, and that all funds be sent to the said D. L. Cooper, up to that time; and that the above recommendations be sent by circular letter to every minister and session clerk in your Synod.

We hereby return the report of Rev. J. W. Duvall, President of the Board of Trustees, to your reverend body.

69. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church, for 1907, the election of certain trustees, found at page 660 of printed abstract of record last referred to, as follows:

Synod placed the name of G. W. Freeman in place of W. R. Nichols; also Rev. J. W. Duvall in the place of Dr. H. Clay Yates on the Board of Trustees of Missouri Valley College.

70 The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church, 1909, found at pages 667 to 671 of the printed abstract of record last referred to, as follows:

In connection with the foregoing it was ordered that the following paper be spread upon the minutes of the Synod:

Whereas, During the year 1906 certain members of the Synod of Missouri of the Cumberland Presbyterian church, and certain persons within and under the jurisdiction of said Synod abandoned said Synod and denied its jurisdiction; and

Whereas, At such time the Board of Trustees of Missouri Valley College, at Marshall, Mo., was constituted with thirteen members, ten of whom, according to the character of said Missouri Valley College, were to be named and supplied by said Synod of Missouri, and ten of whom at said time were so named and supplied by said Synod, and were holding their commission as such trustees and under authority of said Synod; and

Whereas, Said Board of Trustees and the members thereof at such time were among those who abandoned said Synod or denied its further jurisdiction over said board or college; and

Whereas, Said Board of Trustees and the members thereof as at that time constituted have failed to report to this Synod of Missouri of the Cumberland Presbyterian Church, at the annual meetings of said Synod, of the conditions, prospects, necessities and wants of said College, and have failed to make any report as to who constitute the faculty, and as to the number, age, sex and advancement of pupils, and the time of attendance, and have failed to make report as to moneys received or disbursed, or as to the investment of endowment and other funds under their management and control, as required by the charter of said College, although this Synod has been in regular session during each and every year of said time. And said Board of Trustees and the members thereof, so this Synod is informed and believe, during the year 1906, declare all allegiance to another district Synod and body, to-wit: The Synod of Missouri of the Presbyterian Church; and

Whereas, The members of said board as aforesaid, and so supplied by this Synod (the Missouri Synod of the Cumberland Presbyterian Church) at the time of such secessions from its membership or denial of its jurisdiction, still claim to be members of and constitute the Board of Trustees of the said College, and have in possession and under their control and management the franchises, endowments, properties and rights of said College and are operating the same under the jurisdiction of said Synod of Missouri of the Presbyterian Church, U. S. A., and are making reports required by its charter to be made to this body to said Synod of the Presby-

terian Church, U. S. A., and are making reports and are in all things using and applying said College, its prestige, endowments, properties and franchises to the advancement of the interests of the Presbyterian Church, U. S. A., and to the advancement of the interests of the said Synod of Missouri of said Presbyterian Church, U. S. A., and in total disregard of the uses and purposes of said corporation (for which it was organized), and in total disregard of the rights and interests of the Cumberland Presbyterian Church and the interests of the Cumberland Presbyterian Church and the Synod of Missouri of the Cumberland Presbyterian Church, and have and are yet attempting to wholly divert said College, its properties, endowments and franchises, and the users thereof, from said Cumberland Presbyterian Church, and from said Synod of Missouri of said Cumberland Presbyterian Church; and

Whereas, The said members of the said Board of Trustees at such time constituted had been by this Synod (Synod of Missouri of the Presbyterian Church) elected for terms of six years each, and whereas, of such members so elected the terms of Erasmus Pearson, J. C. Cobb, W. T. Baird, W. P. Starks, Luther Nichols and Ben Eli Guthrie have since expired and they no longer hold commissions from this Synod, but hold commissions or pretend to hold the same from the Synod of Missouri for the Presbyterian Church, U. S. A., and whereas, this Synod has elected J. W. Duvall, C. H. Harrison, O. G. Dameron, G. P. Grimes, A. J. Ferrill, G. W. Freeman, T. C. Newman members of said Board of Trustees to supply the places of aforesaid members upon the board as their respective terms for which they were elected by the Synod of Missouri of the Cumberland Presbyterian Church have expired, therefore, be it

Resolved, By this Synod that such members of the board, namely: George Ward, D. F. Manning and A. C. Stewart, who now hold commissions from this Synod issued prior to the year of 1906, or who are members of such board by virtue of election to such by the Synod of Missouri for the Cumberland Presbyterian Church and whose terms have not yet expired, are hereby removed as such trustees and their offices declared vacant and the persons named be appointed members of such board in lieu of those deposed, namely, B. F. Garst, G. W. Lankford and J. E. Eberts, and the above named, together with the members of said Board of Trustees heretofore appointed by this Synod (Synod of Missouri) for the Cumberland Presbyterian Church, to succeed the said Pearson, Cobb, Stark, Nichols, Ray and Guthrie as their respective terms expired, to-wit: J. W. Duvall, C. H. Harrison, O. G. Dameron, G. P. Grimes, Wm. Hinton, G. W. Freeman, T. C. Newman, B. F. Garst, G. W. Lankford and J. E. Eberts do now constitute the true and lawful members of the Board of Trustees for the Missouri Valley College as named by the Synod of Missouri of the Cumberland Presbyterian Church in said Missouri Valley College, its management, endowments, properties, franchise and rights whatever and to such end they are fully authorized and empowered.

71. The defendants offer in evidence from the Minutes of the Synod of Missouri, of the Cumberland Presbyterian Church for the year of 1910, the report of the Board of Trustees of Missouri Valley

College to said Synod, and the adoption thereof as found at pages 672 to 676 said abstract of record referred to above, as follows:

Synod adopted the report of the trustees of the Missouri Valley College as amended.

REPORT OF TRUSTEES OF MISSOURI VALLEY COLLEGE.

To the Synod of Missouri of the Cumberland Presbyterian Church, in Session at Pertle Springs, Johnson County, Missouri, August 18-24, 1910:

MODERATORS AND BRETHRTN: The trustees of Missouri Valley College report we met in the Odd Fellows' Hall in Marshall, Missouri, November 4, 1909, and opened with prayer by J. W. Duvall, after which he was elected president of the board, J. E. Eberts secretary and D. L. Cooper of Marshall, Mo., was elected treasurer. He gave bond, G. P. Grimes and B. F. Garst being his bondsmen.

The following was adopted:

WHEREAS, The Board of Trustees of Missouri Valley College, a corporation under the control and management of th Missouri Synod of the Cumberland Presbyterian Church, is lawfully entitled to the properties, franchises, rights of said corporations, and to all property, real and personal, including the endowment fund thereof; and,

WHEREAS, This Board of Trustees has been authorized, empowered and directed by the Missouri Synod of the Cumberland Presbyterian Church to take any and all steps, legal and equitable, that may be necessary for obtaining and continuing in the control and management of said Missouri Valley College and its properties, franchise and rights, therefore be it

Resolved, By this board that the Board of Trustees take such steps as may be necessary to recover the lands, college buildings, money, notes, endowment fund and all property and rights which belong to said Missouri Valley College. Be it further

Resolved, That Judge W. C. Caldwell of Trenton, Tennessee; Robert M. Reynolds and Dean D. Duggins of Marshall, Missouri, be retained and employed as attorneys for the board to institute and bring suits, legal and equitable, as may be necessary to accomplish the purpose aforesaid. Said suit or suits to be brought by our attorneys at such time and in such manner as our said attorneys may see proper and may think to the best interest of the college. Be it further

Resolved, That our said attorneys shall be paid and receive reasonable compensation for their services in the prosecution of said suit or suits and that all the necessary expenses incurred in this behalf shall be paid out of a fund to be raised by this board and that the sum of three hundred dollars each be paid them now as a retainer out of the funds now on hand. Be it further

Resolved, That the board appoint some person or persons as its agent or agents to solicit and collect money to a fund to be held and used by this board in defraying all necessary expenses and attorneys' fees and cost in said suits.

Our attorneys brought suit in the Circuit Court of Saline County,

ty for the possession of the college November 6, 1909, as well as for all the lots and other real estate and franchise belonging to the College. On the 13th day of November, 1909, the Synod of Kansas of the Presbyterian Church in the United States of America, being an incorporated body, brought suit in the Federal Court in Kansas City, Missouri, against you for the possession of Missouri Valley College. Your trustees met in Marshall November 23, 1909, and after advising with our attorneys a committee of two was appointed to go to Kansas City and employ additional counsel—an attorney who was an experienced practitioner in the Federal Court in that city.

The next day, November 24, the committee, accompanied by R. M. Reynolds, went to Kansas City, and after getting all the information we could, decided on Sanford B. Ladd, of the firm of Gage, Ladd & Small. This suit is now pending in the Federal Court in Kansas City. On the 8th of December the moderator and W. H. Roberts, stated clerk and treasurer of the Presbyterian Church in the United States of America, in the name of that church and of all its members, brought suit in the Federal Court in Kansas City for all the church houses, lots and all other real estate in seventeen counties, Saline being one of the counties. Immediately a mass meeting of Cumberland Presbyterians was called to meet in Kansas City December 21 to consider what to do. On that day a number of people from different parts of the state met in Kansas City and decided to answer the bill filed against us, and appointed all of your trustees present to employ counsel and make the fight possible. The trustees retaining the same counsel, viz., W. C. Caldwell, R. M. Reynolds and Sanford B. Ladd. We think we have able counselors, men who are honest and energetic, men who have worked hard to defend your property rights. If honesty and hard work will win, your property is safe. We have as good talent as we could get. The suit of the possession of Missouri Valley College came up June 21 in Marshall, and in the afternoon of the first day of the trial the defendants in the suit filed an amended answer of thirty-seven typewritten pages, containing much new matter, which our attorneys could not answer without taking more time than they were willing to ask, and rather than do that or go on with the case and make the best defense they could, they chose to have the case continued until the fall term of court. If you can get justice in the courts, and I believe we will, we will gain every piece of property in the state we contend for. Your trustees are doing all they can to put you in possession of your property.

REV. J. W. DUVALL,
President of the Board of Trustees
of the Missouri Valley College.

72. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church for the year 1895, found in above mentioned abstract of record at pages 676 and 677 thereof, as follows:

Resolved, That it is the sense of this Synod that the interests of our church and the kingdom of our Lord can be better advanced by a non-delegated Synod and hence we submit to the Presbyteries

the matter of rescinding their former action making the Synod a delegated body, and thus permit all ordained ministers of the Synod and an elder from each church to attend and be members of the Synod. The Presbyteries shall report their action upon this question to the Stated Clerk of the Synod.

73. The defendants offer in evidence from the Minutes of the Synod of Missouri of the Cumberland Presbyterian Church for the year of 1896, found in last above mentioned abstract of record, at pages 677 and 678 thereof, as follows:

The Stated Clerk made the following report, which was concurred in:

To the Synod of Missouri in Session at Moberly, Oct., 1896.

DEAR BRETHREN: This is to certify that I have been officially informed since your last meeting that the following Presbyteries have voted in favor of a non-delegated Synod: Kirksville, Lexington, Neosho, New Lebanon, Ozark, Platte, Salem, Salt River, Springfield and St. Louis.

The following voted for a delegated Synod: Chillicothe, McGee, West Plains and West Prairie.

Official information to this effect was given to each of the Stated Clerks of your Presbyteries.

J. W. MITCHELL, Stated Clerk.

74. The defendants offer in evidence from Minutes of the Synod of Kansas of the Presbyterian Church in the United States of America for the year of 1907, at page 23 thereof, paragraph 2, from supplemental report of the committee on Enabling Act, as follows:

We further find that the Synod of Kansas A did have and hold certain property rights and franchises in the Missouri Valley College, now located within the bounds of the Synod of Missouri. Therefore your committee would recommend and hereby move that the Synod of Kansas transfer all of said property rights and interests that it may have in Missouri Valley College, because of the Enabling Act, to the Synod of Missouri of the Presbyterian Church in U. S. A., and hereby direct that the trustees of the former Synod of Kansas A convey all such property interests in and to Missouri Valley College to the said Synod of Missouri.

75. The defendants offer from the Minutes of the Synod of Kansas of the Presbyterian Church in the United States of America, for the year of 1909, at page 24 thereof, the rescinding resolutions, as follows:

Whereas, The Synod of Kansas of the Presbyterian Church U. S. A., did in 1907, at Emporia, pass the following resolution:

2. "We further find that said Synod of Kansas A did have and hold certain property rights and franchises in the Missouri Valley College, now located within the bounds of the Synod of Missouri; therefore your committee would recommend that the Synod of Kansas transfer all of said property rights and interests that it may have in Missouri Valley College, because of the Enabling Act, to the Synod of Missouri of the Presbyterian Church U. S. A., and hereby direct that the trustees of the former Synod of Kansas A convey all such property interests in and to Missouri Valley College to the said

Synod of Missouri." (Minutes Synod of Kansas 1907, page 23.)

And whereas, the action contemplated in said resolution has not been performed, and said property rights have not been conveyed by the said Board of Trustees of Kansas Synod A:

And whereas, upon maturer consideration we find that said resolution was hasty and unwise; therefore,

Resolved, That said resolution numbered 2 and quoted above is hereby rescinded and declared null and void.

76. The defendants offer in evidence the petition in the cause together with the filing thereof of Missouri Valley College et al., v. Guthrie et al., in the Circuit Court of Saline County, Missouri, found at pages 1 to 19, printed abstract of record in said cause on appeal to the Supreme Court of Missouri, as follows:

(Proceedings in Circuit Court of Saline County, Missouri.)

On the 6th day of November, 1909, the plaintiffs filed their petition in the Circuit Court of Saline County, Missouri, including affidavit and Exhibits Nos. 1, 2, 3, A, B, C, which petition is in words and figures as follows:

PETITION.

State of Missouri, County of Saline—ss.

In the Circuit Court of Saline County, Missouri, January Term, 1910.

Missouri Valley College, a corporation organized under the laws of Missouri, whose situs is at Marshall, Missouri; J. W. Duvall and U. G. Dameron, residents of Chariton County, Missouri; C. B. Harrison and J. N. Eberts, residents of Johnson County, Missouri; B. F. Garst, resident of Saline County, Missouri; G. P. Grimes, a resident of Monroe County, Missouri; G. W. Freeman, a resident of Wright County, Missouri; T. C. Newman, a resident of Lawrence County, Missouri; William Hinton, a resident of Henry County, Missouri, comprising the Board of Trustees of the said Missouri Valley College, J. W. Duvall being the President, and J. N. Eberts being the Secretary thereof, and all of them being representatives and appointees of the Synod of Missouri of the Cumberland Presbyterian Church, Plaintiffs,

vs.

E. D. Pearson and W. P. Stark, residents of Pike County, Missouri; David F. Manning, Peter H. Rea and George H. Althouse, residents of Saline County, Missouri; John C. Cobb, a resident of Lafayette County, Missouri; A. C. Stewart, a resident of the city of St. Louis, Missouri; W. T. Baird, a resident of Adair County, Missouri; George Ward, a resident of Gentry County, Missouri; Ben Eli Guthrie, a resident of Macon County, Missouri; Luther Nickell, a resident of Callaway County, Missouri, who are usurping the control and management of the property and affairs of Missouri Valley College; also William H. Black, W. E. Grube, J. M. Penick, Albert McGinnis, J. A. Evrad, E. F. Biddell, E. S. Place, ——— Stephens, comprising the faculty of Missouri Valley College, all of who are residents of Saline County, Missouri Defendants.

PETITION.

Plaintiffs respectfully state to the court that the plaintiff Missouri Valley College is an educational institution incorporated under the laws of Missouri, by the procurement and under the direction, control and fostering care of the Synod of Missouri of the Cumberland Presbyterian Church, and that the other plaintiffs constitute the present Board of Trustees of Missouri Valley College, having been duly elected and appointed as such by the Synod of Missouri of the Cumberland Presbyterian Church by virtue of the power and authority vested in that Synod by the charter, a copy of which is herewith filed as Exhibit No. 1 to this petition, but not to be copied unless called for by the defendants.

Plaintiffs state to the court that the said charter contemplates and provides that Missouri Valley College shall always be under the direction and control of a Board of Trustees elected and appointed as therein provided by the Synod of Missouri of the Cumberland Presbyterian Church and Kansas Synod of the Cumberland Presbyterian Church, so long as both shall exist, and that the said College and its property and business shall be controlled and owned by and in the interest of those Synods of the Cumberland Presbyterian Church, and not otherwise. Kansas Synod of the Cumberland Presbyterian Church has ceased to exist and now has no person appointed and elected by it in the Board of Trustees of Missouri Valley College, these personal plaintiffs who as aforesaid have been elected and appointed by the Synod of Missouri of the Cumberland Presbyterian Church being now the only members of the Board of Trustees of Missouri Valley College, and as such being vested with all the powers and functions and franchises, rights and title and property thereof.

Plaintiffs show to the court that Missouri Valley College was incorporated in the year 1888 and that since that time it has acquired and now has, as they are informed and believe and allege, property worth in the aggregate about \$400,000.00, constituting all the endowment of approximately \$185,000.00, equipments, buildings and real estate aggregating in value approximately \$220,000.00, all of which property plaintiffs are informed and believe and allege is now under the control and dominion of the defendants Pearson, Stark, Manning, Rea, Althouse, Cobb, Stewart, Baird, Ward, Guthrie and Nickell, who have illegally and wrongfully excluded the plaintiffs from the possession and control thereof and diverted the same to the use and benefit of the Presbyterian Church in the United States of America.

Plaintiffs state that on the 10th day of September, 1888, James A. Gordon, trustee, for the consideration of one dollar and other considerations, conveyed to the Missouri Valley College, a corporation, the following described tract of land, situated in the County of Saline, in the State of Missouri, that is to say: beginning at the southeast corner of the intersection of College and Redman avenue, running thence east on the south side of College avenue, aforesaid, 930 feet to Conway avenue, thence south along the west side of said Conway avenue 1,380 feet to Morrow avenue, thence west along the north side of said Morrow avenue 930 feet to Redman avenue, thence

north along the east side of said Redman avenue 1,380 feet to place of beginning, in College Addition to the City of Marshall, as surveyed and platted as shown by plat on file in Recorder's office of Saline County, Missouri, said tract being designated thereon as college campus.

The further consideration of this deed being the locating, establishing and maintaining a college upon said land so conveyed and said land shall never be sold, conveyed, mortgaged or in any manner disposed of by the grantee herein; but shall forever be held for college and college ground purposes, free from all deeds or trust, mortgages, claims, liens, judgments and executions suffered, given or created by the grantee herein, its trustees or agents, which said deed was duly signed, acknowledged, delivered and recorded in the Recorder's office of Saline County, Missouri, on the 22nd day of January, 1889, in Deed Book 61, at page 168 thereof, a certified copy of which in herewith filed as Exhibit No. 2, and made a part hereof, but not to be copied unless called for by the defendants.

Plaintiffs state and aver that on said above described real estate have been erected the college buildings, dormitories, power plant and other buildings and equipment belonging to said Missouri Valley College, all of which are wrongfully and illegally withheld from the plaintiffs by the last named defendants and by them diverted to the use and benefit of the Presbyterian Church in the United States of America.

Plaintiffs aver that about \$100,00.00 of the endowment was raised by the Missouri Synod of the Cumberland Presbyterian Church, prior to the incorporation of Missouri Valley College, and was turned over to its first Board of Trustees and that said corporation was organized and created for the purpose of having, receiving and holding said endowment fund and any and all other property raised or acquired thereafter for college purposes, for the benefit of the Cumberland Presbyterian Church, more particularly the Synod of Missouri of that Church. All of the said property was acquired and should be held in trust for the exclusive use and benefit of the Cumberland Presbyterian Church.

They aver that the said property was so received and held and used by the Board of Trustees of Missouri Valley College up to the 24th day of May, 1908, when the defendants Pearson, Stark, Manning, Althouse, Cobb, Stewart, Baird, Ward and Guthrie, who were at that time members of the Board of Trustees, voluntarily abandoned the Cumberland Presbyterian Church, denying all further allegiance thereto and declaring all allegiance to the Presbyterian Church in the United States of America by virtue of an alleged union between the two churches, and thereupon they and the defendants Nickell and Rea wrongfully and illegally diverted all of the said property, real and personal, from the Cumberland Presbyterian Church to the Presbyterian Church in the United States of America for which and in whose interests they have ever since held and used and now hold and use all of the said property wrongfully, and illegally excluding these plaintiffs therefrom.

Plaintiffs are advised and believe and charge that the said departing defendants who are made trustees by the Synod of Missouri of the Cumberland Presbyterian Church along with the other mem-

bers of said Board because they were members of that Church and in that Synod by their denial of allegiance to the Cumberland Presbyterian Church going into the Presbyterian Church in the United States of America, as aforesaid, abandoned their offices as members of said Board and denuded themselves of all trusts, interests, powers and privileges in connection therewith and with Missouri Valley College; and that thereupon all such trusts, interests, powers and privileges were by operation of law devolved upon these plaintiffs when elected and appointed as trustees of the said Board as aforesaid.

Plaintiffs further aver that the terms of the said defendants, who were formerly Cumberland Presbyterians, and of Nickell and Rea, who were not of that church all long since expired by limitations and that none of them have since the expirations of their terms been re-elected or reappointed as members of the Board of Trustees of Missouri Valley College by the Synod of Missouri of the Cumberland Presbyterian Church, for which reason and for the further reason that all of them have persistently diverted the said property from the use and benefit of the Cumberland Presbyterian Church to which it was dedicated have ceased to have any legal right to the control and dominion of any of the said property.

Plaintiffs show to the court that those of the defendants who were formerly members of the Cumberland Presbyterian Church have voluntarily gone into the Presbyterian Church in the United States of America by virtue of a so-called union and merger alleged to have been consummated on the 24th day of May, 1906. Plaintiffs are advised and believe and charge that the said scheme of union and merger was and is illegal and void; that it contemplated the merger of the Cumberland Presbyterian Church with all its judicatories and members and ministers and property, local and general, educational and otherwise, into, and the absorption thereof by the Presbyterian Church in the United States of America; that it also contemplated and required the abandonment of the Confession of Faith, constitution and other laws of the Cumberland Presbyterian Church, and the total extinguishment of its denominational existence and organization; that only that portion of the scheme of merger and absorption embraced in the question: "Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America as revised in 1903, and all its other doctrinal and ecclesiastical standards and the scriptures of the Old and the New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice was submitted to and voted upon by the Presbyteries of the Cumberland Presbyterian Church, the General assembly of that Church assuming without authority or power by itself to pass upon the balance of the scheme;" all of which plaintiffs are advised and believe and charge was and is unconstitutional, ultra vires and void. The basis referred to in the question just quoted is that printed in Section 2 of the plan of reunion and union embraced in the joint report on "union" and does not include the surrender of the name and organization and all of the legal and cor-

porate rights and powers of the Cumberland Presbyterian Church as provided in Section 1 of that plan, as will appear readily from the literal reproduction thereof on page 15 of a printed pamphlet called "Successive Steps," and herewith filed as Exhibit "A" to this petition, but not to be copied unless called for by the defendants.

The said scheme is embraced in what is termed the joint report on union appearing in the printed minutes of the General Assembly of the Cumberland Presbyterian Church for the year 1904 on pages 62a to 65a inclusive, and the action taken thereon by that Assembly appears on page 30 of the same minutes; both the report and the action thereon are copied verbatim in said Exhibit "A" of this petition.

Practically every step taken in reference to the said scheme and the resolutions and declarations in reference thereto are likewise embraced in the said Exhibit "A" to which reference is made without further quotation.

Plaintiffs are further advised and believe and charge that the said scheme, if it had been otherwise authorized by the constitution of the Cumberland Presbyterian Church, would nevertheless be null and void because of numerous irreconcilable differences and antagonisms in matters of doctrine held and taught by the two churches respectively. The Presbyterian Church in the United States of America was and is Calvinistic in its doctrines, having for its creed the Westminster Confession of Faith which is contained in the printed book entitled, "The Constitution of the Presbyterian Church in the United States of America," which is herewith filed as Exhibit "B" to this petition, but not to be copied unless called for by the defendants; while on the other hand the Cumberland Presbyterian Church was and is in its doctrines on the middle ground between Calvinism and Armenianism, having for its creed the Confession of Faith adopted in 1883, and contained in the printed book entitled, "Confession of Faith and Government of the Cumberland Presbyterian Church," which is herewith filed as Exhibit "C" to this petition for all proper references, but not to be copied unless called for by the defendants. Plaintiffs state that the differences and antagonisms between the doctrines of the two churches will readily appear by a comparison of Chapter 3 and Chapter 10 of Exhibit "B" with Sections 8-34-35-38-51 and 54 of Exhibit "C"; also by a comparison of questions and answers 12 to 13 of the larger catechism and question and answer 7 of the shorter catechism contained in the Exhibit "B," with question and answer 7 of the catechism contained in the Exhibit "C"; also by a comparison of questions and answers 67-68 of the larger catechism and questions 19, 20 and 21 of the shorter catechism contained in the Exhibit "B" with questions and answers 21, 22 and 23 of the catechism contained in the Exhibit "C," and also by a comparison of other parts of the same exhibits on the subjects of justification, saving faith, perseverance of the saints and other exhibits that need not be here mentioned.

Plaintiffs further show to the court that immediately after the alleged consummation of the aforesaid scheme and merger and after the attempted adjournment of the General Assembly of the Cumberland Presbyterian Church on the 24th day of May, 1906, never to meet again by those favoring the scheme those commissioners in

that assembly opposing that action and the said scheme of absorption and union continued that session of the General Assembly of the Cumberland Presbyterian Church and after rescinding all such steps on the part of those favoring the scheme and transacting other business adjourned the General Assembly of that Church as required by Section 41 of its Constitution to meet again on the third Thursday in May, 1907, and Dickson, Tennessee; that the General Assembly adjourned to meet again on the third Thursday in May, 1908, at Corsicana, Texas, where it did meet with representatives from a larger per cent of the 114 Presbyteries, and after transacting its usual business adjourned to meet again on the third Thursday of May, 1909, at Bentonville, Arkansas, when and where the General Assembly of the Cumberland Presbyterian Church did meet, and after the transaction of its business adjourned to meet again on the third Thursday of May, 1910, at Dickson, Tennessee, when and where plaintiffs verily believe the meeting of the General Assembly of that Church will be held, and then another meeting place will be appointed, and thus it will go on from year to year in its missions of usefulness, notwithstanding the attempt to destroy and surrender the Cumberland Presbyterian Church made by the defendants in this cause and others on the 24th day of May, 1906, at Decatur, Illinois.

Plaintiffs also state to the court that the Synod of Missouri has kept up its organization and held its regular meeting since the 24th day of May, 1906, as before, and that at its last meeting in October, 1909, it adjourned to meet again in regular course.

Plaintiffs show to the court that the Synod of Missouri of the Cumberland Presbyterian Church, which is still a vital and active organization, has authorized, empowered and directed the personal plaintiffs to bring and prosecuted a proper suit for the recovery of the property, real and personal and mixed of Missouri Valley College, which they are now doing.

Plaintiffs show to the court that the Supreme Court of Missouri on the 8th day of June, 1909, delivered an opinion in the case of Charles A. Boyes et al., v. J. L. Roberts et al., in which it was held that the said scheme of union and merger was illegal, unconstitutional, ultra vires and void upon various grounds and for various reasons, including those hereinbefore mentioned in this petition; that suit was brought by numerous persons who, like most of the defendants to this petition, had gone from the Cumberland Presbyterian Church into the Presbyterian Church in the United States of America by virtue of the said scheme, for the purpose of enforcing the same and passing thereby into the Presbyterian Church in the United States of America, the house of worship of the local congregation of the Cumberland Presbyterian Church at Warrensburg, Missouri. Persisting Cumberland Presbyterians, like these personal plaintiffs, were impleaded as defendants in that cause. Plaintiffs show that the Supreme Court at the conclusion of its opinion in that cause, used the following language, to-wit:

"This union is an unwarranted merger of the Cumberland Presbyterian Church into the Presbyterian Church, U. S. A. It is an unwarranted surrender of name, Confession of Faith, judicatories, and an unconditional merging of the one church into the other. We say unconditional surrender and merger, because one party kept name,

creed government and everything, whilst the other abandoned everything; such mergers have been condemned by the best considered cases, both in this country and in England.

In England the attempted union and merger of the Free Church of Scotland and the United Presbyterian Church was condemned by the House of Lords, Appeal Cases, 1904, p. 695.

Such a union is likewise condemned by one of the strongest Chancery Courts in this country, that of New Jersey. Associated Reform Church v. Trustees of Theological Seminary, 4 N. J. Ch., R. 77.

You cannot by union or merger put one church into another having a different creed and doctrines without forfeiting the property held in trust to such members of the body as remain faithful to the original creed and doctrine.

By the deeds, the property in this case is held by F. M. Cockrell, J. L. Roberts and W. K. Morrow, as Trustees of the Cumberland Presbyterian Church of the Warrensburg congregation in one deed, and in the others as Trustees of the Cumberland Presbyterian Church in Warrensburg, Mo. This attempted union being invalid, and the plaintiffs herein having dissented from the Cumberland faith and cast their lot with another church of a different faith and creed, they are not entitled to the beneficial use of this property, but the beneficial use thereof belongs to defendants and all other members of the congregation of the Cumberland Presbyterian Church of Warrensburg, Mo., who have remained faithful to the doctrines of that church.

The universal rule is that where there is a schism in a church, those remaining faithful to the tenets of the church at the time of the dispute, whether they be in the majority or in the minority, are entitled to hold the property.

Plaintiffs are advised and believe and charge that the decision of the Supreme Court of the State so rendered is practically controlling in their favor in this case.

They show to the court that notwithstanding that decision the defendants one and all continue to withhold the property of the Missouri Valley College from the plaintiffs and to exclude them from the use and control and possession thereof, thereby attempting to set at naught and defy the judgment of the court of last resort in this state.

Plaintiffs further state and represent to the court that as far back as 1874 Cumberland Presbyterians in the State of Missouri conceived an idea of establishing a college in this state, for the use and benefit of the Cumberland Presbyterian Church. With that view a commission was appointed and into its hand Cumberland Presbyterians throughout the state paid sums of money aggregating \$100,000, which constituted the endowment of that amount before mentioned in this petition, and in further prosecution of the same plan, 180 acres of land near Marshall, Missouri, was purchased by Cumberland Presbyterians and those in sympathy with their said scheme. That land was conveyed by two deeds to James A. Gordon, as trustee, and the same was thereafter held by him in trust for such purposes, parts of it being sold from time to time and the proceeds being held by him in trust, likewise in furtherance of their plans, the representa-

tives of the Synod of Missouri and the Kansas Synod of the Cumberland Presbyterian Church caused Missouri Valley College to be incorporated, turned over to it the \$100,000 endowment, caused the trustee, James A. Gordon, to convey that part of the land described in Exhibit 2 to this petition to Missouri Valley College, and with the residue of the funds on hand, erected the buildings on that land; and from that time until the present that property, as plaintiffs are advised and believe and allege, has been charged with a trust in favor of the Cumberland Presbyterian Church in the Synods of Missouri and Kansas, and subject to the control and management of trustees appointed by such Synods.

Plaintiffs show to the court that the defendants Black, Grube, Penick, McGinnis, Laughlin, Evrard, Biddell, Place and Stevens are in the employment of their co-defendants in this petition as teachers in Missouri Valley College, and that they now constitute the faculty of that Institution and are giving instructions to the students in attendance. The members of the faculty are not made parties to this suit with a view of interrupting them as teachers during the present scholastic year, but only to have them act in recognition of the rights of these personal plaintiffs and in recognition of their authority as the lawful board of trustees, nor is it the purpose of the plaintiffs in any event now to interrupt the progress of the school in its regular course, but only to have the other defendants excluded from the control, dominion and management of the corporation, its property and affairs and to reclaim all of the same for that plaintiffs who constitute the only legal representatives of the Synod of Missouri of the Cumberland Presbyterian Church and comprise the only legal Board of Missouri Valley College.

Plaintiffs are advised and believe and charge that they are entitled to come into this Honorable Court, and through its judgments and decrees, obtain and receive the relief indicated in this petition.

Plaintiffs show to the Court that the injuries complained of in this petition are continuous and irreparable, and that they have no adequate remedy at law.

Plaintiffs finally show to the Court that the defendant George H. Althouse is the Treasurer of Missouri Valley College and has in his hands its notes, moneys, bonds, mortgages and other personal property, and he is made a defendant in this cause not necessarily with a view of removing him from that position, but rather for the purpose of having the Court to require him to act in subordination to these personal plaintiffs and in recognition of their rights and authority as the only legal Board of Trustees of Missouri Valley College, and that in case of his refusal so to do, the Court will appoint a receiver in his room and stead to take charge of and hold the assets of the Corporation.

Wherefore, the premises considered, plaintiffs pray that those named as defendants in the caption of this petition be made such by the issuance and service of proper process to the end that they be compelled to appear and answer the allegations thereof, but not on oath, that being waived; that on final hearing the Court adjudge and decree the so-called union and merger to be unconstitutional, ultra vires and void; that none of the property of Missouri Valley College was thereby passed into the Presbyterian Church in the United

States of America or made subject to its control or to the control of any of the members thereof; that the defendants who were formerly members of the Board of Trustees of Missouri Valley College are no longer entitled to exercise any of the functions thereof; that these personal representatives are the legal Board of Trustees of Missouri Valley College, and as such, entitled to the possession, dominion and control of all of its assets and affairs.

That in the meantime a writ of injunction be issued and served, to the end that the said defendants be restrained from further withholding any of the said property and assets from the plaintiffs, and from longer diverting the same to the use and the benefit of the Presbyterian Church in the United States of America: that these personal plaintiffs be placed in the immediate possession of all of the assets and property of Missouri Valley College, and that unless the defendant Althouse shall recognize the authority of these personal plaintiffs and agree to hold the assets of the College now in his hands in subordination to the rights of these plaintiffs he be removed and a receiver appointed in his room and stead.

They pray also that the rest of the defendants who constitute the faculty of the College are required to recognize the authority of these personal plaintiffs as the legal Board of Trustees and to act in subordination of their authority, and that the injunction be made perpetual on final hearing.

Plaintiffs pray for such other and further and general and special relief as they may be entitled to in a Court in equity and good conscience under the facts in their case.

77. The defendants offer in evidence the issue of summons to various defendants on the 6th day of November, 1909, from pages 21 and 22 of said printed abstract of record, as follows:

SUMMONS.

On the 6th day of November, 1909, writs of summons were duly issued in said cause by the clerk of the Circuit Court of Saline County against said defendants, and directed as follows. To the sheriff of the city of St. Louis for defendant A. C. Stewart; to the sheriff of Pike County for the defendants E. D. Pearson and W. P. Stark; to the sheriff of Lafayette County for the defendant John C. Cobb; to the sheriff of Adair County for the defendant W. T. Baird; to the sheriff of Gentry County for the defendant George Ward; to the sheriff of Macon County for the defendant Ben Eli Guthrie; to the sheriff of Calloway County for the defendant Luther Nickell, and to the sheriff of Saline County for all the other defendants, said summons being returnable to the January term, 1910, of the Circuit Court of said Saline County.

The writs of summons were duly served upon the defendants, commanding them to appear at the said January term, 1910, of said Circuit Court and plead to said petition.

78. The defendants offer in evidence the amended answer of defendants W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell, in said cause found at page 35 to 43 of said print-

ed abstract of record in said cause on appeal to the Supreme Court of Missouri, as follows:

Now comes the defendants W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell, by their attorneys, and for their joint and separate amended answer to plaintiff's petition admit:

That Missouri Valley College is an educational institution incorporated under the laws of the State of Missouri.

That said Missouri Valley College was incorporated in the year 1888, and that since that time it has acquired and now has a large amount of property, consisting of its endowment, equipments, buildings, and real estate, aggregating a large amount, but the defendants are unable to state whether the actual value of said property aggregates the amounts stated in the petition, or whether said petition correctly sets out the full value of all of its said property.

That defendants Stark, Manning, Rea, Cobb, Stewart, Baird, Ward, Guthrie and Nickell are now, and were at the time of the institution of this suit, and had been long prior thereto, in possession and control of said property as its Board of Trustees.

That on the 10th day of September, 1888, James A. Gordon executed a deed conveying the tract of land described in the petition to the Missouri Valley College, and that said deed contained the conditions set out in said petition.

That on said real estate there have been erected the said college buildings, dormitories, power plant and other buildings and equipments belonging to the Missouri Valley College.

That a portion of the money was raised for the endowment by the members of what was at that time the Missouri Synod of the Cumberland Presbyterian Church and was turned over to its trustees.

But the defendants aver that the greater portion of the money represented in the property now in question was raised and contributed by the members of what was the Kansas Synod of the Cumberland Presbyterian Church and contributed by other citizens of the State of Kansas, Missouri, Colorado and Nebraska.

Admit that all the property of said Missouri Valley College was received, held and used by the Board of Trustees of said College up to the 24th day of May, 1906, and that at that time thees defendants, together with E. D. Pearson, now deceased, were members of said Board of Trustees.

Admit that a scheme of union between the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America was adopted by the general assemblies of said churches respectively.

These defendants further state that both the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America have written constitutions and the same form of government; that the same was carried out in each of said religious organizations by a graduation of bodies called church judicatories, consisting of church sessions, Presbyteries, Synod and a general assembly, which is the highest court of the church and has supreme judicial, legislative and executive powers; that the General Assembly of each of said religious organizations had power and authority to

initiate and, with the consent of the Presbyteries of such church, to consummate a union with other religious organizations; that such steps were taken by the governmental powers of both of said churches that a complete union of the two churches under the name of the Presbyterian Church in the United States of America was fully and finally consummated in accordance with the laws, rules and regulations of said churches; that each and every member of the former Cumberland Presbyterian Church, including the plaintiffs in this suit, upon becoming members thereof, agreed to submit to and be governed by the rules and regulations of said church and the decisions of its judicatories; that in the year 1905, after the proceedings for such union had been considered by the General Assembly of the Cumberland Presbyterian Church and submitted to its Presbyteries and adopted by a majority of them, said General Assembly, on the day of May, 1905, in the City of Fresno, State of California long before there was any division in said church and at a time when said General Assembly represented all factions of said organization, and while plaintiffs claimed to be and were members of said church, adopted a resolution declaring that a constitutional majority of the Presbyteries of the Cumberland Presbyterian Church had voted approval of the union and reunion of said churches upon the basis set forth in a joint report on said subject, and said General Assembly did declare and find that said reunion and union had been constitutionally agreed upon by the Cumberland Presbyterian Church, and that the basis of said union had, for the purpose of said union, been constitutionally adopted; and thereafter, at a session of the said General Assembly held in May, 1906, in the City of Decatur, Illinois, said General Assembly, composed of commissioners representing all of the Cumberland Presbyterians in the United States, reaffirmed said declaration that said union had been consummated, and defendants aver that said decision of said General Assembly is binding and conclusive upon said Cumberland Presbyterian Church and all of its members, and defendants set up and plead the same and aver that the question of the validity of said union and of the steps taken to perfect the same, under the laws of said Cumberland Presbyterian Church was submitted for determination to said General Assembly by the members of said church favoring said union, as well as those opposing the same, and that the decision of said General Assembly upon the question so submitted to it is conclusive and binding upon the plaintiffs and all the members of said church, and that the matters so arbitrated and settled cannot be reopened.

That the members of the Cumberland Presbyterian Church had the right to contract and agree with each other to abide by the rules and regulations of said Cumberland Presbyterian Church and to submit for determination to the church judicatories any and all questions arising under its laws, and to be bound by such decision, and that this right is protected by the Fourteenth Amendment of the Constitution of the United States, which defendants set up and plead as a defense to any reopening or reexamination of the question so settled by the said General Assembly.

That under and by virtue of the action of the said Cumberland Presbyterian General Assembly, the Synod of the Presbyterian Church in the United State of America in Missouri has become and

is now the ecclesiastical successor of the former Cumberland Presbyterian Synod of Missouri.

Defendants further admit that as far back as 1874 Cumberland Presbyterians in the State of Missouri conceived the idea of establishing a college in this state and collected money in this state and elsewhere to constitute an endowment for such college.

But defendants allege that Cumberland Presbyterians in the States of Kansas, Nebraska and Colorado joined in the conception of the idea of establishing a college in the State of Missouri and collected money in the said State of Kansas, Nebraska and Colorado to constitute an endowment for said college.

Admit that their co-defendants Grube, Penick, McGinnis, Laughlin, Evrard, Biddle, Place and Stephens are in the employment of these defendants, as the Board of Trustees of said College, as teachers in said Missouri Valley College, and that they now constitute the faculty in that institution and are giving instructions to the students in attendance.

That George H. Althouse is the treasurer of the Missouri Valley College and has in his hands, notes, moneys, bonds, mortgages and other personal property.

These defendant deny each and every other allegation contained in said petition.

And further answering, these defendants state that the corporation the Missouri Valley College, is improperly joined as plaintiff for the reason that these defendants and Charles M. Tabler, Samuel Garvin and George H. Althouse, Jr., are the de facto officers in charge of said corporation; that the plaintiffs, or no one for them, had, or now has, any right to use the name of said corporation or make it a party o this action.

These defendants aver and state that at the time of the institution of this suit they, Charles M. Tabler, Samuel Garvin and George H. Althouse Jr., were, and for a long time prior thereto had been, and now are, the trustees of said Missouri Valley College, and as such, and not otherwise, have been, and now are, in possession and control of its corporate property rights and franchises, and have been, and still are, managing and controlling the same as such Board of Trustees.

And for another and further defense these defendants state that these defendants, together with Charles M. Tabler, Samuel Garvin and George H Althouse Jr., not parties hereto, are now, were for a long time prior to bringing this action, and ever since have been, the duly elected and qualified trustees of said Missouri Valley College and are the de facto officers of said corporation, and as such were at the time of bringnig said action, ever since have been, and now are, in full charge and control of all the properties in question, and that all the relief prayed for by plaintiff is bottomed upon the alleged right of plaintiffs to the offices of said corporation, and this court has no jurisdiction to try the same in this action.

And defendants further charge that there is a non-joinder of parties to this action, for the reason that under the charter of the Missouri Valley College there shall be thirteen trustees, and that Charles M. Tabler, Samuel Garvin and George H. Althouse, Jr., with these defendants, were at the time of the institution of this suit, and

for a long time prior thereto had been, and now are, the trustees of Missouri Valley College, and as such, and not otherwise, have been, and still are, managing and controlling the same as such Board of Trustees and are necessary parties to this action and should have been made parties thereto.

For another and further defense these defendants allege the facts to be that said Missouri Valley College was incorporated under the laws of the State of Missouri by the procurement of the Synods of Missouri and Kansas of the Cumberland Presbyterian Church, which said Synods and their successors, which should be recognized as such by the General Assembly of said church, should have the power to elect the trustees of said corporation; that after the union of the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America was agreed upon as heretofore alleged, there was donated to said College the sum of eighty-seven thousand dollars, which was used in the erection of buildings upon said College ground and put into its endowment funds, which donations were made, received and accepted by said corporation with the understanding that said union had been consummated and that the Missouri and Kansas Synods of the said United Church should have the power to elect the trustees of said corporations, being the power granted by its Charter to said Kansas and Missouri Synods as they existed prior to the union, and by reason of said facts the College corporation and its officers were estopped and debarred from disputing the validity of said union, or that said Missouri and Kansas Synods of said reunited church and their successors have the power to elect said trustees.

Wherefore, these defendants deny that the plaintiffs are entitled to the relief prayed for in the petition, or to any relief, and pray that they be hence dismissed with their costs.

79. Defendants offer in evidence the reply filed in said cause above referred to from page 44 of said abstract of record last referred to, as follows:

Now at this day come the plaintiffs and for reply to the joint and separate amended answer of the defendants W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell deny each and every allegation in said amended answer contained, and in each count thereof, and in each separate defense thereof.

Having fully replied, the plaintiffs ask judgment as in their petition prayed.

82. The defendants offer in evidence from the report of the Board of Trustees of Missouri Valley College, for the year of 1905, at page 387 of the abstract of record in Missouri Valley College vs. Guthrie et al., concerning the A. C. Stewart donation of \$30,000.00 for a College chapel, library and music building, the following:

The proposition concerning the largest benefaction the college has ever had, was made by the donor, a member of the Board of Trustees, at a caled meeting of the Board held at the College on April 6th, 1905.

83. The defendants offer in evidence the pro forma decree of the incorporation of the Trustees of Missouri Valley College, from

the Circuit Court record of Saline county, Missouri, for June 1888, as follows:

State of Missouri, County of Saline—ss.

IN THE CIRCUIT COURT JUNE TERM, 1888.

Be it remembered that at and during said term of said Court, the same being the 25th day of June, 1888, the following among other proceedings were had and entered of record, to wit:—

Petition of E. D. Pearson, D. D. Duggins, and T. C. Rainey, for the Incorporation of Missouri Valley College.

Now at this day come the petitioners and this cause coming on to be heard and the petition and Articles of Association having remained on file for more than three days since the same were presented to this Court, the same are taken up and submitted to the Court, and the same having been seen and heard it is the opinion of the Court that such Articles of Agreement and the purposes of the Association come properly within the purview of Article Ten Chapter Twenty-One (21) of the Revised Statutes of 1879, and acts amendatory thereto and are not inconsistent with the Constitution or laws of the United States or of this State.

It is therefore, ordered that said petitioners Erasmus D. Pearson, President, Dean D. Duggins, Secretary and Thomas C. Rainey, Treasurer, and their associates be and they are here by consolidated and united into a corporation to be known and called The Missouri Valley College.

83a. The defendants offer from the Minutes of the General Assembly of the Cumberland Presbyterian Church for 1904, from the report of the committee on fraternity and union and from pgs. 710-717 printed abstract of record Missouri Valley College et al. vs. Guthrie et al., paragraph 111 thereof, under heading, "Then is Union a Duty?," as follows:

That is a question which is now before your reverend body. In the opinion of your Committee, the presumption is decidedly in favor of it being the duty of the Church to enter into this Union. Further, it is the opinion of your Committee that the doctrinal status as between the two Confessions of Faith favors it. There never can be a unanimity that is absolute, where many finite intelligences are concerned. We see things from different points of view, with different degrees of emphasis out of differing personalities, and impelled by disparate motives, therefore it is to be expected that any one who so desires can find objections in the statements of another, but brethren dwell together in unity, not by identity of beliefs, nor by the acceptance of absolutely unobjectionable doctrinal symbols, but by mutual tolerance, forbearance and love. If this Union is consummated the real tie which binds will not be the confessional symbol of the United Church, but the Spirit of Christ in the hearts of the brethren.

84. The Joint and Several Answer of defendants, excepting defendant Missouri Valley College, in case of The Synod of Kansas of

the Presbyterian Church in the United States of America et al., complainants, versus, Missouri Valley College et al., Defendants.

(Omitting Caption.)

These defendants respectively, now and at all times hereafter saving to themselves any and all manner of benefit of, advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answer and say.

1. They admit that the suit involves a controversy whose value and amount exceeds, exclusive of interest and costs the sum or value of Two Thousand Dollars. But they deny that such controversy is wholly between citizens of different states; they also deny that the case arises under the laws and constitution of the United States. The real controversy is, as hereinafter stated, wholly between citizens of the State of Missouri.

2. These defendants have no knowledge, and no information sufficient to form a belief as to whether the individual complainants or any of them are officers or members of the Synod of Kansas of the Presbyterian Church in the United States of America; they deny that said individual complainants, or any of them, represent said Synod of Kansas.

3. These defendants further answering say that all of them are and for many years have been members of the Cumberland Presbyterian Church in the State of Missouri; that at the time of the filing of the bill of complaint, the defendant J. W. Duvall was Moderator, the defendant A. W. Green was Stated Clerk of the Missouri Synod of said Church, and that the defendants J. E. Cortner, L. F. Clemens, and S. H. McElvain had been members of the last preceding session of said Missouri Synod. They admit that the Cumberland Presbyterian Church in the State of Missouri, is and has been for many years, a voluntary religious organization; they say that for more than twenty years there has been and still exists the Missouri Synod of the Cumberland Presbyterian Church in the State of Missouri; they deny that any of the defendants are agents or representatives of said Missouri Synod except in such manner as is hereinafter stated.

4. These defendants admit that the Cumberland Presbyterian Church prior to 1881 was an unincorporated voluntary religious society, existing under the Presbyterian form of government, having a gradation of what was known, as the church courts, consisting of "Session," "Presbytery," "Synod" and "General Assembly." They aver that said Cumberland Presbyterian Church still is and has been ever since the year 1810 such unincorporated voluntary religious society; they admit that such church courts do have a certain control of the others in the order mentioned in the bill of complaint, and that the General Assembly is the highest court in the organization; but they aver that such control is not absolute, but is limited in its character. They admit that the "Session," the "Presbytery," the "Synod" and the "General Assembly" respectively are composed as stated in the bill of complaint. They admit that the "Session" ex-

ercises jurisdiction over the single church, but they aver that such jurisdiction is limited in its character, and that the "Presbytery," and "Synod" and the "General Assembly" exercise jurisdiction as stated in the bill of complaint, but they aver that the jurisdiction of each of them is limited in its character. They admit that said church has a written constitution, and that its ecclesiastical standards exist in printed form.

They admit that the General Assembly was invested with legislative, executive and judiciale authority, but they deny that it had the power to decide all questions of law, doctrine, or ecclesiastical policy.

They admit that in 1881 there were situated in Missouri and Kansas the synods mentioned in the bill. They aver that several years before the year 1881 the four synods of said two states formed and created an "Educational Commission," which was a voluntary organization, which said "Educational Commission" the said synods caused to be duly incorporated under the laws of the State of Missouri in said year 1881. They admit that said "Educational Commission" was formed for the purpose of collecting a permanent fund for the endowment of an institution of learning as stated in the bill of complaint. They admit that the charter of said corporation contained provisions as stated in the bill of complaint. The charter, however, contained certain provisions not mentioned in the bill of complaint which will be referred to hereinafter. They admit that after the formation of said "Educational Commission" the three synods in Missouri were combined and succeeded by the Missouri Synod, and the said Missouri Valley Synod was succeeded by the Kansas Synod of the Cumberland Presbyterian Church. They admit that in 1888 the said Kansas Synod as the successor of the Missouri Valley Synod, and the Missouri Synod as the successor of the McAdow, Missouri and Ozark Synods, proceeded to elect between them thirteen trustees, ten of whom were elected by the said Missouri Synod and three of them were elected by the said Kansas Synod, some of those who were elected by each of the two synods being elected, some for a term of two years, some for a term of four years, and the remainder for a term of six years. They admit that the said thirteen trustees, under the direction and pursuant to the wishes and orders of said Synods, incorporated themselves under the name of the Missouri Valley College under the laws of the State of Missouri, pursuant to and under the orders of the Circuit Court of Saline County, Missouri. They admit that when said corporation was so formed the said "Educational Commission" turned over all of said fund raised as aforesaid to the board of trustees of the said corporation known as the Missouri Valley College.

5. These defendants admit that the Presbyterian Church in the United States of America now is and for a long period prior to the dates mentioned in the bill has been an unincorporated voluntary religious society under what is termed a Presbyterian form of government; but they deny that its government is or has been identical with that of the Cumberland Presbyterian Church. They deny that such action was taken by the Presbyteries and General Assemblies of the two churches in the years 1903, 1904, 1905 and 1906 as to form a union between them. They aver that the action attempted in that

regard and for that purpose was illegal and inoperative. They deny that any union was in 1906 or at any other time consummated or adjudged to be absolutely conclusive final or binding upon either of such denominations by their respective Assemblies. They deny that by reason of the action taken, the two churches became one church under the name of the Presbyterian Church in the United States of America or that such church under that name became the legal successor of the Cumberland Presbyterian Church. They deny that the union has been legally consummated, or that as a result thereof whatever title, legal or equitable, to the property of the members of the Cumberland Presbyterian Church and of the judicatories or other ecclesiastical agencies of the Cumberland Presbyterian Church passed by operation of law to the members of the corresponding judicatory or agency of what is termed in the bill the united church; and deny that all the members, including ministers, of the Cumberland Presbyterian Church, refused to go into the Presbyterian Church in the United States of America or what is termed in the bill, the united church; or that by such refusal Cumberland Presbyterians, members and ministers, ceased to be members of that church, and of the Presbyteries and Synods thereof; or that the officers and members of the boards or committees, or persons in other ecclesiastical positions of the Cumberland Presbyterian Church by their said refusal to go into the Presbyterian Church in the United States of America vacated their respective offices or positions, or relinquished all their right in all church property and in relation thereto. They deny that by reason of the action taken the right of members and officers of the Cumberland Presbyterian Church to control, possess or use the property of that church, and of the judicatories and agencies thereof, passed to the corresponding members, judicatories and agencies of the Presbyterian Church in the United States of America. They aver that all such property, and the right to control, possess and use the same remained in the members, judicatories and agencies of the Cumberland Presbyterian Church since the said action was taken.

These defendants admit that the Synod of Missouri of the Cumberland Presbyterian Church in session at Odessa, Missouri, in October, 1905, passed the resolution set out in the bill; but they deny that this synod or the members thereof had any power or authority to pass such resolution, or that the passage thereof was in any sense legal and binding, or that it operated to change or transfer any of the property therein referred to from the ownership, possession, control or management of the Missouri Synod of the Cumberland Presbyterian Church. These defendants aver that the instructions, directions, attempted authority and power assumed to be given to and vested in the board of trustees of the Missouri Valley College by the terms of said resolution were wholly nugatory and of no effect, for the reason that the said Synod had no power or authority to given such instructions, directions, authority or power, and the said attempted action by the members of the Synod favoring the resolution was unconstitutional and *ultra vires*.

These defendants deny that the Kansas Synod of the Cumberland Presbyterian Church passed the same resolution.

6. These defendants admit and aver that they were members of

the Cumberland Presbyterian Church prior to the alleged consummation of the attempted union in May, 1906, and that they have since that time continued to be members of that church, refusing absolutely to become members of the Presbyterian Church in the United States of America under the alleged union or otherwise. They deny that they attempted, with others, to perfect an organization in the name of the Cumberland Presbyterian Church after the date last mentioned, but say that they, and other members of that church, have remained members thereof, and have gone on since that date as before in the transaction of its business as members and officers of the Cumberland Presbyterian Church, the same organization as at the foundation of that church in the year 1810.

They admit and aver that the defendant J. W. Duvall was Moderator, and the defendant A. W. Green stated clerk and defendants J. E. Cortner, L. F. Clemens and S. H. McElvain were members of the Mo. Synod of the Cumberland Presbyterian Church at the session of said Synod last prior to the filing of the bill in this case. They deny that the said Mo. Synod of the Cumberland Presbyterian Church is an alleged or pretended synod; but say that it is a valid and legal body of the Cumberland Presbyterian Church regularly constituted according to the laws of said Church.

They admit and say that the said legally constituted Missouri Synod of the Cumberland Presbyterian Church has elected as trustees of Missouri Valley College the defendants J. W. Duvall, B. F. Barst, George P. Grimes, Charles H. Harrison, O. G. Daneron, J. E. Eberts, G. W. Freeman, T. C. Newman and William Hinton; and that it has directed the said trustees and authorized them as its agents and representatives to take any and all necessary steps to obtain charge, control, and possession of all of the property of the Missouri Valley College from the persons wrongfully holding the same, as will be hereinafter fully stated.

These defendants deny that they, or other Cumberland Presbyterians with whom they are associated as members or officers bear any relation what ever to a "renunciation movement," as alleged in the bill; but they aver that they are and have been since May 24, 1906 attempting only to maintain the integrity of the Missouri Synod of the Cumberland Presbyterian Church, and refusing to go into the Presbyterian Church in the United States of America by virtue of the alleged union.

7. These defendants admit that the Mo. Valley College is a corporation duly organized and existing under the laws of the State of Missouri for the purposes set forth in the charter as hereinafter stated, and that it has, by donation, bequest and otherwise, acquired and holds in trust, but only under the provisions of its charter as hereinafter set forth, the property, real, personal and mixed, set out and described in the bill; and that the total value thereof as as stated therein, \$411,468.95. They deny that all of said property or any of it belongs to the Synod of Kansas of the Presbyterian Church in the United States of America and to the Synod of Missouri of the Presbyterian Church in the United States of America or either of them; and they deny that it is held in trust for them or either of them by the Missouri Valley College.

These defendants aver that all of the said property belongs to

the Missouri Synod of the Cumberland Presbyterian Church, the Kansas Synod of the Cumberland Presbyterian Church having ceased to exist since May 24, 1906, and that all of the said property should be held in trust for the Missouri Synod of the Cumberland Presbyterian Church by the Missouri Valley College.

These defendants admit that there was no organized dissent to said alleged union in the State of Kansas and that there does not now exist any organization in Kansas claiming to be the Cumberland Presbyterian Church and that there is not now any Synod of the Cumberland Presbyterian Church in State of Kansas, or any local congregations thereof. Defendants admit that a large percentage of the former membership of the Cumberland Presbyterian Church in the State of Kansas became members of the Presbyterian Church in the United States of America, but aver that some became members of other churches; and defendants deny that thereby they transferred the former organization of the Cumberland Presbyterian Church to said Presbyterian Church in the United States of America, or that thereby they transferred the Kansas Synod of the Cumberland Presbyterian Church to the Presbyterian Church in the United States of America, or to the Kansas Synod thereof, and deny that complainants do now or can represent said former Cumberland Presbyterians or the former Kansas Synod of the Cumberland Presbyterian Church as such, in this action.

8. These defendants deny that they claim to be the Synod of what the bill states was, and what these defendants assert still is, the Cumberland Presbyterian Church of the United States of America, or that as such, they claim to be the beneficial owners of all property held by the Missouri Valley College. They aver that they are all members of the Cumberland Presbyterian Church within the bounds of the Missouri Synod of that church, and that as such, they are among the beneficiaries of the property held by Missouri Valley College; and they further aver that some of them are trustees of Missouri Valley College, and that others of them are officers of the Missouri Synod of the Cumberland Presbyterian Church. Defendants do claim that the Missouri Synod of the Cumberland Presbyterian Church is the beneficial owner of all the property held by Missouri Valley College. These defendants admit that they deny that the complainants and those whom they pretend to represent, or any of them have any interest in said property, and they deny that the complainants represent, or that they can represent in this litigation any persons or corporations other than those. While these defendants admit that they do dispute any claim of the complainants, they deny that they are injuring the cause of the college by depriving it of students, or threatening it with litigation, or in any other manner whatever. These defendants admit that the number of attendants at said college as students has been greatly reduced since the 24th day of May 1906, but they aver that the cause of such diminution in the number of students is the fact that the persons who have been wrongfully in the possession, control and charge of said property and college and its management since that date have wrongfully diverted the same from the Cumberland Presbyterian Church in Missouri to the Presbyterian Church in the United States of America.

These defendants admit that those of them who were elected by

the Missouri Synod of what the bill declares was but what these defendants aver is still the Cumberland Presbyterian Church as trustees of the Missouri Valley College were by said Synod instructed to demand, not of the Missouri Valley College or its legal officers or trustees, but of those persons who were and are in wrongful possession and control and claiming to be its officers and trustees, the immediate possession and control of all the real and personal property of said Missouri Valley College, to the end that they, as the lawful trustees thereof, might administer and manage and college and its property for the purposes to which it was originally devoted. They admit that they were also instructed that if such demand was not complied with to take such legal steps as might be proper to enforce compliance with the demand. They admit that pursuant to such instructions, before the filing of the bill fo complaint herein, the defendants who were such trustees did make such demand and bring their suit in the Circuit Court of Saline County, State of Missouri, in which county such property was located, against the persons so in the wrongful possession of said college and its property for the possession of all said property, which said suit was, at the time of the filing of the bill of complaint herein and still is pending: these defendants, while they admit their intention to prosecute said suit so brought by them in the Circuit Court of Saline County, deny that they are threatening to carry os any other legal proceedings in reference to said property, or that they are threatening any other litigation respecting the same, but they do admit that in said suit they do deny the interest of the complainants in said property. They deny that complainants have any right in said property or that they are entitled to have such alleged right adjudicated or quieted as against the claims made by these defendants, or against any other claims that may be hereafter made by the Missouri Synod of what the bill alleges was, and what the defendants assert still is the Cumberland Presbyterian Church, or which may be made by any person or persons claiming by, through or under said Cumberland Presbyterian Church, or that the complainants are entitled to have these defendants perpetually enjoined from claiming title to said realty or said endowment funds, or from in any way molesting or interfering with the management of said property or trust fund, or the management of the said Missouri Valley College.

9. These defendants deny that the corporate complainant herein was organized and incorporated by any voluntary association whatever. They aver that the corporation plaintiff first became a corporation on the 22nd day of September 1909 by filing its charter in the office of the Secretary of State for the State of Kansas on said day; these defendants say that all they know and the only information they possess as to the purposes for which the corporate plaintiff was organized into a corporation are those stated in its charter so filed; they aver that the purposes of said corporation as stated in said charter are to support public worship and education by exercising general supervision over the religious and educational affairs of Presbyterian Churches schools and colleges in the State of Kansas, and the holding, owing and conveying of such real and personal property to which the title may be vested in it for the purposes of such support and supervision; and these defendants therefore aver that the

charter of said corporation did not authorize it to acquire any interest in any real or personal property outside of the territorial limits of the State of Kansas, or support public worship or education outside of the State of Kansas, or to exercise any supervision whatever over the religious or educational affairs of Presbyterian Churches or schools or colleges outside of the State of Kansas; and therefore, it has no interest, and cannot lawfully possess any interest, direct or indirect, in the property, real or personal, in controversy in this action, all of which is situated in the County of Saline in the State of Missouri, and said corporation is and must be an entire stranger to the controversy here involved, and cannot be heard to maintain this suit or assert any interest in this controversy here involved, and cannot be heard to maintain this suit or assert any interest in this controversy, or be a party complainant herein.

These defendants deny that said corporation so created in September 1909 is subject to the control of said alleged voluntary association, or that whatever property it holds or owns, it holds in trust for said alleged voluntary association; they deny the existence of any such voluntary association; they aver that said alleged voluntary association has no interest of any nature whatever in the property in controversy in this suit; they deny that the individual complainants, or any of them are representatives of any such voluntary association, and they aver that none of the individual complainants have any interest of any nature in the property, real or personal, involved in this controversy, and can have no standing as complainants in this action.

10. Answering the averment in paragraph 10 of the bill of complaint as to what these defendants claim and assert, these defendants deny that they make a claim or assertion in the manner and in the language and form stated in said paragraph of the bill. As to said averment these defendants do say that they claim and assert and they furthermore do say, that it is a fact that the Supreme Court of the State of Missouri by its opinion and judgment in the case of Charles A. Boyles et al against J. L. Roberts et al (referred to in said paragraph 10, now officially reported in Volume 222 of the reports of said Supreme Court beginning at page 613, did determine that the alleged union of the two religious organization was invalid and that the proceedings relied upon to support the claim of such union were void and of no effect; and they aver that upon such determination it became the duty of all officers and members of the Cumberland Presbyterian Church as well as of the Presbyterian Church in the United States of America to acquiesce in and abide by the same, so far at least as to recognize the fact—and it is a fact—and no longer dispute and contend to the contrary, that the title, both legal, beneficial and equitable, of all property, both real and personal, in the State of Missouri, belonging before said alleged union, to the Cumberland Presbyterian Church, or any of the associations, organizations or agencies controlled by it, or in which it was beneficially interested, remains and continues to be vested in such Church and its said organizations, associations and agencies, precisely the same as before: and they do claim and aver that all such persons members of the Cumberland Presbyterian Church who did not acquiesce and determine to abide by said judgment of the Supreme Court of the State of Missouri in the manner aforesaid, and

who did recognize as valid said alleged union and merger, and who did, after said alleged merger and union become and are now members of the Presbyterian Church in the United States of America, did, by such action, relinquish and surrender all their right, title and interest, legal, equitable or beneficial in any of the property of the Missouri Valley College and any other property in the State of Missouri held or owned legally or beneficially by the said Cumberland Presbyterian Church, its organizations, associations or agencies and no longer have any interest of any nature in any of said property. They deny that the church tribunals have decided that said alleged union was valid. They deny that such church tribunal made or could have made any such decision in accordance with the provisions of the laws of their voluntary organizations, or that in accordance with such provisions, that they have, or could have decided in accordance with such provisions that the union was valid, or that such a decision by them was binding upon all the parties hereto. These defendants do admit that they assert and claim that any action of either of said church tribunals referred to in the bill of complaint and relied upon by the complainants as a decision that said union was valid, can neither be regularly recognized nor enforced by judicial tribunals; and they aver that no action of either of said church tribunals claimed by the complainants to be a decision in favor of the validity of said alleged union, is binding upon any persons who were members of the Cumberland Presbyterian Church on the 24th day of May 1906, or are now members of the Cumberland Presbyterian Church.

Answering the averment of paragraph 10 that these defendants threaten and propose to have the law as determined by the Judgment of the Supreme Court of the State of Missouri in the cause above referred to enforced, they say that so far as the property of the Missouri Valley College is concerned, they do intend to assert and insist that this suit, and also the suit already mentioned as having been brought in the Circuit Court of Saline County, Missouri, be adjudged in accordance with the rules of law laid down by the Supreme Court of the state in that opinion.

They deny that the enforcement, or the attempt to enforce the law as declared by the Supreme Court of Missouri in the case hereinbefore mentioned, deprives complainants or any of them, or any other person of the equal protection of the law, or that it takes their property without due process of law, or that it unreasonably abridges any of their privileges or immunities as citizens of the United States. They deny that the force of the constitutional provision referred to in said paragraph was to give complainants the rights and privileges averred in said paragraph.

These defendants further say that nothing in said paragraph 10 of the bill of complaint contained, entitles the complainants to invoke the protection of the constitutional provisions therein referred to. They also deny that any facts stated in said paragraph 10 of the bill of complaint constitute any infraction or violation of any of the constitutional provisions referred to in said paragraph or any of the provisions of the 14th article of Amendment to the Constitution of the United States.

11. These defendants further answering repeat the averments that the alleged and attempted union was unconstitutional, ultra

vires and void, and in order that the court may see the ground of that averment, they enter into some detail about the matter, and give some history of the Cumberland Presbyterian Church.

"The Cumberland Presbyterian Church was organized in Dockson County, Tennessee, February 4, A. D., 1810. It was an outgrowth of the Great Revival of 1800—one of the most powerful revivals that this country has ever witnessed. The founders of the Church were Finis Ewing, Samuel King, and Samuel McAdow. They were ministers in the Presbyterian Church who rejected the doctrine of election and reprobation as taught in the Westminster Confession of Faith. The causes which led to the formation of the Church are clearly and distinctly set forth in publications issued at the time, and in various tracts and books published subsequently. To these the reader is referred for full information on the subject.

"The Cumberland Presbytery, which was constituted at the time of the organization of the Church, and which originally consisted of only three ministers, was in three years sufficiently large to form three Presbyteries. These Presbyteries, in October A. D., 1813, met at Beech Church in Summer County, Tennessee, and constituted a Synod. This Synod at once formulated and published a 'Brief Statement' setting forth the points wherein Cumberland Presbyterians dissented from the Westminster Confession of Faith. They were as follows:

1. That there are no eternal reprobates.
2. That Christ died not for a part only, but for all mankind.
3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.
4. That the Spirit of God operates on the world, or as co-extensive: as Christ has made atonement, in such a manner as to leave all men inexcusable.

At the same meeting of Synod, too, a committee was appointed to prepare a Confession of Faith. The next year, A. D., 1814, at Sugg's Creek Church, Wilson County, Tennessee, the report of the committee was presented to Synod, and the revision of the Westminster Confession of Faith, which they presented was unimously adopted as the Confession of Faith of the Cumberland Presbyterian Church. Subsequently the formation of the General Assembly took place. This judicature, at its first meeting, A. D., 1829, at Princeton, Kentucky, made such changes in the form of government as were demanded by the formation of this new court.

In compiling the Confession of Faith, the fathers of the Cumberland Presbyterian Church had one leading thought before them, and that was to so modify the Westminster Confession as to eliminate therefrom the doctrine of universal fore-ordination and its legitimate sequences, unconditional election and reprobation, limited atonement, and divine influence correspondingly circumscribed. All the bodily defined statements of the doctrine objected to, were expunged, and corrected statements were made. But it was impossible to eliminate all the features of hyper-Calvinism from the Westminster Confession of Faith by simply expunging words, phrases, sentences, or even sections, and then attempting to fill the vacancies thus made by corrected statements or other declarations, for the

objectionable doctrine, with its logical sequences, pervaded the whole system of theology formulated in that book.

"The compilers knew this, and they also knew that a book thus made must necessarily have some defects. Still they felt assured that they had prepared one which could not be fairly and logically interpreted without contradicting the most objectionable features of hyper-Calvinism; and they felt too, that they had formulated a system of doctrines, which any candid inquirer after truth might understand. They did, however, claim that the time would never come when there might be a demand for a restatement of these doctrines, which would set forth more clearly and logically the system of theology believed and taught by the Cumberland Presbyterian Church. That time did come, and so general was the desire throughout the Church to have the Confession of Faith revised that at the General Assembly, which convened in the City of Austin, Texas, A. D., 1881, a paper was introduced looking to that end, and it was adopted by a unanimous vote.

In view of the great importance of the work, two committees were appointed, and it was made the duty of the first committee to revise the Confession of Faith and Government, and of the second to review and revise the work of the first. The committees met at Lebanon, Tennessee, the seat of Cumberland University, where every facility could be enjoyed for such labors, having free access to a fine theological library. After bestowing great labor upon their work, giving every item earnest and prayerful attention, the committees completed the tasks assigned them, and the results of their labors were published in pamphlet form and in weekly papers of the Church for information. 'That criticism might be made by those desiring to do so.' The committees, after receiving these criticisms, again met and remained in session for a number of days, giving careful and prayerful consideration to all the suggestion made. They then completed their work without a single dissent, and submitted the result to the General Assembly which convened in the city of Huntsville, Alabama, A. D., 1882. That General Assembly, in 'Committee of the whole,' considered with great patience and care every item in the entire book, taking a vote on each one separately, and at the close of each chapter or subject taking a vote upon it as a whole. In this way the entire book, from beginning to end was carefully and prayerfully scrutinized and necessary changes were made,—the most of them verbal; and there was not in the final vote a single negative.

Having completed its work, the General Assembly transmitted the book to the Presbyteries for their approval or disapproval. The reports from the Presbyteries to the next General Assembly, which convened in the City of Nashville, Tennessee, A. D., 1883, showed that this work had been almost unanimously adopted. The General Assembly, having reviewed these returns from the Presbyteries, formally declared said book to be the Confession of Faith and Government of the Cumberland Presbyterian Church.

"The book is now sent forth with the strongest convictions that it is in accord with the word of God. Let it be tested, not by tradition, but by the Holy Scriptures, the only infallible rule of faith and practice."

The accuracy of the foregoing sketch is attested by the Gen-

eral Assembly itself, which in the year 1885, ordered its insertion as a preface to the "Confession of Faith" and "Government," adopted in 1883. That was the last Confession of Faith and Government adopted by the Cumberland Presbyterian Church, and, as these defendants believe and aver, is now in full force and effect and binding upon the entire church and all of its parts. They think and aver that this book was prepared, considered and adopted with too much care and solemnity to be lightly considered and indifferently cast away, only twenty-three years later, as those who have gone out of that church into the Presbyterian Church in the United States of America have attempted to do. The Cumberland Presbyterian Church is now more than a century old. It has always been and now is a separate, independent, voluntary, religious association, controlled and governed by its Confession of Faith and Government, as indicated in the sketch just quoted. Though unincorporated, itself, some of its boards and institutions are chartered, and among them, Missouri Valley College.

From the time of its humble beginning in the year 1810 as before stated to the meeting of its General Assembly in May, 1906, the Cumberland Presbyterian Church extended its influence and organization into numerous states, and at the latter date, as shown by the Minutes of the General Assembly, of that meeting, the Church then had 17 Synods, 114 Presbyteries, 1514 ordained ministers, 9614 ordained elders, 3914 ordained deacons, 2869 congregations, and a total membership of 185,212. Defendants aver that unfortunately since that time, the peace and harmony of this church has been interrupted, and its membership somewhat diminished; nevertheless, it is still a separate, independent and active organization of Christians, with a prosperous and useful future before it, as its friends and members confidently believe.

These defendants aver that the General Assembly at Nashville, Tennessee, in 1903, appointed a committee on Presbyterian Fraternity and Union, to confer with like committees of other Presbyterian bodies in regard to the desirability and practicability of closer affiliation and organic union among the members of the Presbyterian family in the United States.

This committee reported to the General Assembly at Dallas, Texas, in 1904, that it had agreed with a like committee of the Presbyterian Church in the United States of America that each of the two committees should submit to its own General Assembly their joint report, favoring the reunion and union of those two churches in one, under the name of the Presbyterian Church in the United States of America, upon the "doctrinal basis" of its Confession of Faith, as revised in 1903, and of its other doctrinal and ecclesiastical standards and upon certain conditions and recommendations contained in said report. The General Assembly at Dallas adopted that report and referred a part of the "Basis of Union" contained therein, to the Presbyteries of the Cumberland Presbyterian Church for their "approval or disapproval," this reference being conditioned upon the fact that the Moderator and Stated Clerk should thereafter be notified that the General Assembly of the Presbyterian Church in the United States of America had likewise adopted the said joint report.

The next General Assembly of the Cumberland Presbyterian

Church at Fresno, California, in 1905, appointed a special committee to consider and report the result of the action taken by the Presbyteries of that Church. The committee divided and presented a majority and a minority report. After the rejection of the minority report by a vote of 137 to 111, the majority report was adopted by a vote of 137 to 110; and thereupon the Moderator declared that a majority of the Presbyteries had approved the proposition submitted to them. That report recited that only 111 Presbyteries had expressed themselves, 60 of them voting approval and 51 disapproval. With that report was exhibited a tabulated statement of the detailed vote in the Presbyteries, which statement showed that there were in the 111 Presbyteries, 137 more Presbyterial votes cast against the proposition than in its favor. That is to say, the said exhibit showed that a majority of the Presbyteries, as such, voted "Approval," but that of all the votes cast in those Presbyteries, there were 137 more against approval than for it. The figures in the tabulation show:

470 ministers and 1007 elders, in all 1477 delegates, voting disapproval.

691 ministers and 649 elders, in all 1340 delegates, voting approval.

Making a majority of 137 delegates voting disapproval.

Minutes 1905, pp. 40-42, Successive Steps, 35-41. Every Presbytery, large or small, in the entire denomination was allowed the same counting strength on this question, that is one vote each. Among the 60 Presbyteries voting approval were many of the smallest numerically in the whole Church; and among the 51 Presbyteries voting disapproval were many of the largest numerically in the whole Church. Though the members of the local churches were not asked or permitted to vote, and the scheme did not contemplate that they should, it is confidently claimed by these defendants that about three-fourths of the entire membership have remained true and loyal to the Cumberland Presbyterian Church as such.

The minority report at Fresno in 1905, conceded that sixty of the Presbyteries voted approval, but denied that the scheme had been constitutionally agreed to and that the "Basis of Union" had been "Constitutionally adopted," as stated in a resolution at the conclusion of the majority report; and also denied that the Constitution of the Church authorized such scheme and made numerous objections to the consummation thereof. The said reports and exhibit and the action of the General Assembly thereon appear on pages 37 to 56 inclusive of the Minutes of 1905. Successive Steps, 34-45.

A protest, assigning sixteen grounds of objection to the action of the majority, was signed and filed by the minority. To the protest were attached 91 signatures. It appears on pages 78 to 81 inclusive, of the Minutes for that year. Successive Steps, 45-48.

Subsequently, at the same meeting of the Assembly, the committee on Fraternity and Union was increased by the addition of other members, after which it was directed to ascertain and report to the next meeting such other steps as might be deemed necessary for the completion of the proposed reunion and union.

The report of the enlarged committee was adopted by a majority vote of the General Assembly at Decatur, Illinois, in May, 1906; and, over the protest of a large majority the Moderator declared the un-

ion and reunion to be in full force and effect. After the passage of a resolution to that end by the same majority, over the vote and against the protest of the same minority, the Moderator declared the General Assembly adjourned, sine die, as a separate Assembly, to meet in and as a part of the 119th General Assembly of the Presbyterian Church in the United States of America on the 3rd Thursday in May, 1907, at a place not named. The protest of the minority was made and filed before the roll call on adjournment and before the declaration thereof was made by the Moderator. Minutes 1906, 64 to 80, Successive Steps, 70-85.

The protest being disregarded from the start, and the purpose of the majority to adjourn the Assembly without day and without a place for the next meeting being persisted, in, the majority were informed on the floor of the Assembly, before adjournment actually took place, that the minority would treat the adjournment as illegal and ineffectual, and would continue the session of the General Assembly thereafter; and, immediately upon the announcement of the adjournment, as aforesaid, and before the majority had actually dispersed, one of the minority, a regular commissioner in the Assembly announced in a loud voice, in the hearing of the majority and minority commissioners yet in the assembly hall, that the business of the General Assembly would be resumed at once, in the hall of the Grand Army of the Republic, nearby, the Church building in which the previous part of the session was held, being refused for that purpose.

The minority commissioners, being about one hundred and six in number, then repaired at once to the hall indicated, and there elected a Moderator, Stated Clerk and other officers to fill the places of those who had gone away. Having done this, the attempted adjournment a short time before and the previous declaration that the reunion and union were in full force and effect were treated as ineffectual and rescinded because deemed unauthorized and illegal; and then, after the unfinished business had been transacted, the General Assembly adjourned in due form to meet again on the 3rd Thursday in May, 1907, at Dickson, Tennessee, Sup. Min. 1906, p. 1-12, Successive Steps, 98-100.

The General Assembly of the Cumberland Presbyterian Church met accordingly, in May, 1907, with 76 Presbyteries represented, and after several days spent in the usual business of the General Assembly of the Cumberland Presbyterian Church, adjourned in due form to meet again on the 3rd Thursday in May, 1908, at Corsicana, Texas Min. 1907, pp. 1-43, Successive Steps, 100-106.

Pursuant to that adjournment the General Assembly of the Cumberland Presbyterian Church convened at Corsicana, Texas, on the 3rd Thursday in May, 1908, with a still larger per cent of the entire 114 Presbyteries duly represented therein; and when the usual business of the Cumberland Presbyterian Church covering several days, was finished, its General Assembly adjourned, to meet again as required by the Constitution, at Bentonville, Arkansas, on the 3rd Thursday in May, 1909. After the transaction of its regular business at Bentonville, Arkansas, with an increased representation, the General Assembly adjourned to meet still again at Dickson, Tennessee, on the 3rd Thursday in May, 1910, the centennial year of the Cum-

berland Presbyterian Church; and it met accordingly at Dickson, Tennessee, and after the transaction of its regular business, adjourned to meet again on the 3rd Thursday in May, 1911, at Evansville, Indiana; where it met accordingly, and after the transaction of its regular business adjourned to meet again on the 3rd Thursday in May, 1912, at Warrensburg, Missouri; where it met and held its session accordingly, and after the transaction of its business, adjourned to meet on the 3rd Thursday in May, 1913, at Hopkinsville, Kentucky. And no one will venture to predict that the General Assembly of the Cumberland Presbyterian Church will not meet again in 1913, according to its last adjournment, and that it will not go on thus year after year, though an indefinite period of time, the so-called union and merger to the contrary notwithstanding.

Since the aforesaid action at Decatur, those former Cumberland Presbyterians who approved the action of the majority in the Assembly at that place have ever and continuously, in court and out of court, assumed and asserted that the aforesaid steps on the part of the General Assembly and the Presbyteries of the Cumberland Presbyterian Church in the years 1903, 1904, 1905 and 1906, and similar steps in the main, on the part of the General Assembly and Presbyteries of the Presbyterian Church in the United States of America, have effectuated a reunion and union between the two Churches and completely merged the Cumberland Presbyterian Church, with its ministry and membership and property, into the Presbyterian Church in the United States of America.

On the other hand, those Cumberland Presbyterians who approved the action of the minority in the Assembly at Decatur, these defendants among the number, deny in toto the said assumption and assertion. They assert that the said so called union and merger are illegal and void for many reasons.

The defendants aver that the joint report on union which was considered by the General Assembly of the Cumberland Presbyterian Church at Dallas in 1904 comprised three subjects or subdivisions as follows:

- I. Plan of Reunion and Union of the two Churches.
- II. Concurrent Declarations.
- III. Recommendations.

The first of the subdivisions of the "Plan" consisted of four sections, the language of the first three of which is as follows:

"I. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church, Los Angeles, Cal., May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Church, Nashville, Tenn., May 21st, 1903, shall be united as one Church under the name and style of the Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate Churches now possess.

"2. The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testament shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

"3. Each of the assemblies shall submit the foregoing 'Basis of Union' to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testament shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?"

The fourth section simply provides for the return and ascertainment of the vote.

These defendants aver that the said plan or scheme contemplated and required that the Cumberland Presbyterian Church with its organization, ministry, membership and property of every kind and form be merged into and absorbed by the Presbyterian Church in the United States of America; and the defendants deny that the General Assembly and the majority of the Presbyteries of the Cumberland Presbyterian Church had any power to agree to or participate in the accomplishment of such a result. They aver that the so-called union is but a scheme of merger and absorption, and that it is inoperative and void in toto, because not authorized by the constitution of the Cumberland Presbyterian Church, and in conflict with it. As before stated in this answer, the Cumberland Presbyterian Church was and is of the associates class of religious societies, beginning with the local congregation as the initial unit, called a "particular church;" then ascending to the Presbytery, comprising all local churches within a given territory; then extending further to the Synod, comprising not less than three Presbyteries; and finally reaching the General Assembly, which embraces all the churches and Presbyteries and Synod, and constitutes the supreme judicatory of the church. The Cumberland Presbyterian Church had and has a written constitution which is the supreme law of the church, and entitled to all respect as such by the church as a whole, and by all of its parts; by its members, official or non-official, its local churches, its Presbyteries, its Synods, and its General Assembly, all of which are alike bound by the Constitution, and alike entitled to its protection, none of them being above the Constitution, and none of them having the right to ignore or violate its provisions.

These defendants aver that the courts of the Cumberland Presbyterian Church are named in regular gradation, and that their powers are all delegated and specifically defined in the Constitution, and that none of them have any power not so given. In the language of the Constitution, "These courts are denominated Church Sessions, Presbyterian Synods and General Assembly" (Sec. 24); "and the jurisdiction of these courts is limited by the express provisions of the constitution." (Sec. 25.)

The powers of the Presbytery are recited in Section 31 of the Constitution, and those of the General Assembly in the 43rd section. The powers of the General Assembly are greater and more compre-

hensive than those of the Presbyteries and other courts of the Church, being as follows:

"The General Assembly shall have power to receive and decide all appeals, references, and complaints regularly brought before it from the inferior courts; to hear testimony against error in doctrine and immorality in practice, injuriously affecting the Church; to decide in all controversies respecting doctrine and discipline; to give its advice and instructions, in conformity with the government of the Church, in all cases submitted to it; to review the records of the Synods; to take care that the inferior courts observe the government of the Church; to redress whatever they may have done contrary to order; to concert measures for promoting the prosperity and enlargement of the Church; to create, divide, or dissolve Synods; to institute and superintend the agencies necessary in the general work of the Church; to appoint ministers to such labors as fall under its jurisdiction; to suppress schismatical contentions and disputations, according to the rules provided therefor; to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this Church; to authorize Synods and Presbyteries to exercise similar power in receiving bodies suited to become constituents of these courts, and lying within their geographical bounds respectively; to superintend the affairs of the whole Church; to correspond with other Churches; and, in general, to recommend measures for the promotion of charity, truth, and holiness throughout all Churches under its care."

These defendants aver that this enumeration of powers, though very full and elaborate, does not include the power to effectuate or accomplish or consent to the scheme or plan set out in the first division of the joint report on union heretofore mentioned. They aver that the General Assembly was and is without authority to make or entertain such a proposition, no such authority being given to it alone or in conjunction with any other court of the church.

These defendants aver that the express restriction of Section 25 to certain specified powers is equivalent to an express prohibition against the usurpation of any other powers on the part of the courts of the Cumberland Presbyterian Church; and that the said scheme or plan not being within these specified powers, the action taken in reference thereto by the General Assembly and the 60 Presbyteries was without authority, unconstitutional *ultra vires* and void.

The Constitution of the Cumberland Presbyterian Church was formulated and adopted for the betterment and perpetuation of its own organization, and its terms must be construed with that end in view. All idea of self-destruction and self-surrender as contemplated and required by the said plan or scheme was foreign to the thought of the framers of the Constitution, and is in direct conflict with the language employed therein. The possibility of such a catastrophe was not contemplated by them. No power to accomplish such a result was given, and none can be inferred. The courts of the Church were created by the church, and their duties prescribed by the Constitution. They are not self-made and self-endowed, and all powerful.

These defendants aver that the provision in Section 43 of the Constitution that "The General Assembly shall have power * * *

to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this Church," precludes the adoption of the scheme or plan set out in the joint report hereinbefore referred to.

The defendants state to the court that Section 60 of the Constitution of the Cumberland Presbyterian Church relates to amendments. It is in these words:

"Upon the recommendation of the General Assembly, at a stated meeting, by a two-thirds vote of the members thereof voting thereon, the Confession of Faith, Catechism, Constitution, and Rules of Discipline, may be amended or changed when a majority of the Presbyteries, upon the same being transmitted for their action, shall approved thereof."

But defendants aver that no change or amendment was made or proposed and that the power of change and amendment there conferred, does not authorize the General Assembly and Presbyteries to destroy the constitution or the Church. The integrity of both must be preserved and the organization of the Church continued, notwithstanding any change or amendment that may be made in the laws of the Church.

The defendants aver that the General Assembly and the Presbyteries of the Cumberland Presbyterian Church, notwithstanding Section 60 of the Constitution, were without power to surrender themselves and the Synods and Church Sessions, and local congregations and ministry and membership and property of the Cumberland Presbyterian Church, including the entire organization of the Cumberland Presbyterian Church and the church itself, with all it had, to the Presbyterian Church in the United States of America as contemplated and required by the scheme or plan in question. They had no power by that means or otherwise to destroy themselves and the church which created them. They had no power to impair the organization and existence of the church whose agencies they were. They had no power to say and agree as contemplated and required by that scheme or plan, that there should no longer be a Cumberland Presbyterian Church, or a member, or minister, or local congregation, or Presbytery, or Synod, or General Assembly of that Church, or any property or corporation thereof, and that all of these should be passed over bodily into the Presbyterian Church in the United States of America, as contemplated and required by the said scheme or plan of union. The General Assembly had no power by majority vote or otherwise to destroy and dissolve itself, never to meet again, as it attempted to do on the 24th day of May 1906. Its action in that regard was unconstitutional, ultra vires, and void, being in violation of Section 42 of the Church Constitution, and all other provisions of that instrument; and the action of those who were left in the afternoon of the same day was effective to perpetuate that body. The General Assembly of the Cumberland Presbyterian Church has met annually on the 3rd Thursday in May from that time until the present, and now stands adjourned as required by Section 42 of the Constitution to meet at a place named on the 3rd Thursday in May 1913.

Defendants further answering aver that if there had been no other legal infirmity in the said plan or scheme, the action taken would still be void because the joint report and the plan or scheme therein set forth contemplated that only a part of the plan or scheme

should be submitted, and because only a part of it was in fact submitted to the Presbyteries of the Cumberland Presbyterian Church for "approval" or "disapproval." The first section of the plan, which has already been set out in this answer, though contemplating complete dissolution of the Cumberland Presbyterian Church, and surrender of its organization, membership, ministry, and property, and the absorption thereof by the Presbyterian Church in the United States of America, was not to be submitted, and was not in fact submitted to the Presbyteries. Only the second section of the said plan was to be submitted and was submitted to the Presbyteries for approval or disapproval, and that was to be done and was done by submitting to the Presbyteries the question formulated in the third section of the plan, and embracing only the matter of the second section of the plan in identical terms.

The defendants aver that only the General Assembly took action upon the first section of the plan, which, as before stated, involved the complete dissolution of the Cumberland Presbyterian Church, and surrender of its organization, membership, ministry, and property, and the absorption thereof by the Presbyterian Church in the United States of America. The General Assembly had no power to take such action, and its attempt to do so was unconstitutional, ultra vires, and void.

13. Defendants further answering aver that the doctrines and polity of the Cumberland Presbyterian Church were and are so different from those of the Presbyterian Church in the United States of America as to constitute insuperable legal barriers to the proposed scheme or plan of union of the two Churches, even though all other infirmities in the scheme or plan, and in the action taken, were out of the way, and did not exist.

They aver that the Presbyterian Church in the United States of America is Calvinistic in its doctrine, having for its creed the Westminster Confession of Faith; while the Cumberland Presbyterian Church, in its doctrine, is on the middle ground between Calvinism and Arminianism, having for its creed the Confession of Faith adopted by it in 1883, as before stated. The doctrines of the two Churches, therefore, must be and are essentially different and irreconcilably antagonistic in many substantial features.

At the beginning of its existence and until 1883, the Cumberland Presbyterian Church used the Westminster Confession of Faith with certain important written modifications and unwritten reservations. Its revision of the book in 1814 and again in 1829 was of that character. The object of those modifications and reservations was to exclude certain doctrines of the Westminster Confession of Faith from which they dissented. In the year 1813, before the first of those revisions was made, the Cumberland Presbyterian Synod, which was then the highest judicatory of the Church, formulated and published a "Brief Statement," setting forth certain leading views entertained by Cumberland Presbyterians in opposition to certain doctrines of the Westminster Confession of faith. They are as follows:

- "1. That there are no eternal reprobates.
- "2. That Christ died not for a part only, but for all mankind.
- "3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.

"4. That the Spirit of God operates on the world, or as co-extensively as Christ has made atonement, in such manner as to leave all men inexcusable."

In the revisions by the fathers of the Cumberland Presbyterian Church in 1814 and 1829.

"All the bodily defined statements of the doctrine objected to were expunged, and corrected statements were made. But it was impossible to eliminate all the features of hyper-Calvinism from the Westminster Confession of Faith by simply expunging words, phrases, sentences, or even sections, and then attempting to fill the vacancies thus made by corrected statements or other declarations, for the objectionable doctrine, with its logical sequences, pervaded the whole system of theology formulated in the book." Preface Confession of Faith and Government, 1, 2.

Because of that impossibility, and with a view of setting forth "more clearly and logically the theology believed and taught by the Cumberland Presbyterian Church" its whole Confession of Faith was rewritten and its doctrines restated in 1881 and 1882, in the form adopted in 1883. Preface, 3-4.

Defendants aver that the differences which led to the formation of the Cumberland Presbyterian Church still exist. The following parallel quotations show some of the essential doctrinal differences in the two churches:

**Presbyterian Church in the United
States of America.**

CONFESSION OF FAITH.

CHAPTER III.

OF GOD'S ETERNAL DECREE.

III. By the decree of God for the manifestation of His glory, some men and angels are predestined unto everlasting life, and others fore-ordained to everlasting death.

IV. These angels and men, thus predestined and fore-ordained, are particularly and unchangeably designed; and their number is so certain and definite that it cannot be either increased or diminished.

V. Those of mankind that are predestined unto life, God, before the foundation of the world was laid, according to His eternal and immutable purpose, and the secret counsel and good pleasure of His will, hath chosen in Christ, unto everlasting glory, out of His mere free grace and love, without any foresight of faith or good works,

Cumberland Presbyterian Church.

CONFESSION OF FAITH.

DECREES OF GOD.

8. God, for the manifestation of His glory and goodness, by the most wise and holy counsel of His own will, freely and unchangeably ordained or determined what He himself would do, what He would require his intelligent creatures to do, and what should be the awards respectively of the obedient and the disobedient.

9. Though all divine decrees may not be revealed to men, yet it is certain that God has decreed nothing contrary to His revealed will or written Word.

or perseverance in either of them, or any other thing in the creature, as conditions or causes moving Him thereunto; and all to the praise of His glorious grace.

VI. As God hath appointed the elect unto glory, so hath He, by the eternal and most free purpose of His will, fore-ordained all the means thereunto. Wherefore, they who are elected, being fallen in Adam, are redeemed by Christ, are effectually called unto faith in Christ by His spirit working in due season; are justified, adopted, sanctified and kept by His power through faith unto salvation. Neither are any other redeemed by Christ, effectually called, adopted, justified, sanctified and saved, but the elect only.

VII. The rest of mankind, God was pleased, according to the unsearchable counsel of His own will whereby He extendeth or withholdeth mersy as He pleaseth, for the glory of His sovereign power over His creatures, to pass by, and to ordain them to dishonor and wrath for their sin, to the praise of His glorious justice.

The Larger Catechism.

Q. 12. What are the decrees of God?

A. God's decrees are the wise, free and holy acts of the Council of His will, whereby, from all eternity He hath, for His own glory, unchangeably fore-ordained whatsoever comes to pass in time, especially concerning angels and men.

Q. 13. What hath God especially decrees concerning angels and men?

FREE WILL.

34. God, in creating man in his own likeness, embued him with intelligence, sensibility and will, which form the basis of moral character, and render man capable of moral government.

35. The freedom of the will is a fact of human consciousness, and is the sole ground of human accountability. Man in his estate of innocence was both free and able to keep the Divine law, also to violate it. Without any constraint, from either physical or moral cause, he did violate it.

Catechism.

Q. 7. What are the decrees of God?

A. The decrees of God are His wise and holy purposes to do what shall be for His glory, sin not being for His glory, therefore, He has not decreed it.

A. God, by an eternal and immutable decree, out of His mere love, for the praise of His glorious grace, to be manifested in due time, hath elected some angels to glory; and in Christ hath chosen some men to eternal life, and the means thereof; and also, according to His sovereign power, and the unsearchable counsel of His own will, (whereby he extendeth or withholdeth favor as He pleaseth), hath passed by and fore-ordained the rest to dishonor and wrath, to be for their sin inflicted, to the praise of the glory of His justice.

The Shorter Catechism.

Q. 7. What are the decrees of God?

A. The decrees of God are His eternal purpose according to the counsel of His will, whereby, for His own glory, He hath fore-ordained whatsoever comes to pass.

CHAPTER X.

OF EFFECTUAL CALLING.

I. All those whom God hath predestined unto life and those only, He is pleased in His appointed and accepted time, effectually to call by His Word and Spirit, out of that state of sin and death, in which they are by nature, to grace and salvation by Jesus Christ; enlightening their minds spiritually and savingly, to understand the things of God; taking away their heart of stone, and giving unto them a heart of flesh; renewing their wills, and by His almighty power determining them to that which is good; and effectually drawing them to Jesus Christ, yet so as they come freely, being made willing by His grace.

II. This effectual call is of God's free and special grace alone, not from anything at all foreseen in man, who is altogether passive therein, until, being quickened and renewed by the Holy Spirit, he is

Divine Influence.

38. God, the Father, having set forth his Son, Jesus Christ, as a propitiation for the sins of the world, does most graciously vouchsafe a manifestation of the Holy Spirit with the same intent to every man.

Regeneration.

51. Those who believe in the Lord Jesus Christ are regenerated or born from above, renewed in Spirit, and made new creatures in Christ.

thereby enabled to answer this call, and to embrace the grace offered and conveyed in it.

III. Elect infants, dying in infancy, are regenerated and saved by Christ through the Spirit, who worketh when, and where, and how He pleaseth. So also are all elect persons, who are incapable of being outwardly called by the ministry of the Word.

IV. Others, not elected, although they may be called by the ministry of the Word, and may have some common operations of the Spirit, yet they never truly come to Christ, and therefore cannot be saved; * *

54. All infants dying in infancy, and all persons who have never had the faculty of reason, are regenerated and saved.

The Larger Catechism.

Q. 67. What is effectual calling?

A. Effectual calling is the Work of God's, almighty power and grace, whereby, (out of His free and especial love to His elect, and from nothing in them moving Him thereunto) He doth in His accepted time invite and draw them to Jesus Christ, by lightening their minds, renewing and powerfully determining their wills, so as they (although in themselves dead in sin) are hereby made willing and able, freely to answer His call, and to accept and embrace the grace offered and conveyed therein.

Q. 68. Are the elect only effectually called?

A. All the elect, and they only, are effectually called; although others may be and often are outwardly called by the ministry of the Word, and have some common operation of the Spirit; who, for their wilful neglect and contempt of the grace offered to them, being justly left in their unbelief, do never truly come to Jesus Christ.

The Shorter Catechism.

Q. 19 What is the misery of that estate whereunto man fell?

A. All mankind, by their fall, lost communication with God, are under his wrath and curse, and so made liable to all the miseries of this life, to death itself, and to the pains of hell forever.

Q. 20. Did God leave all mankind to perish in the estate of sin and misery?

A. God, having out of His mere good pleasure, from all eternity, elected some to everlasting life, did enter into a covenant of grace, to deliver them out of the estate of sin and misery, and to bring them into an estate of salvation by a Redeemer.

Q. 21. Who is the Redeemer of God's elect?

A. The only Redeemer of God's elect is the Lord Jesus Christ, who being the eternal son of God became man and so was on continued to be God and man, two distinct natures and one person forever.

Catechism.

21. What are the evils of that estate into which mankind fell?

Mankind, in consequence of the fall, have no communion with God, discern not spiritual things, prefer sin to holiness, suffer from the fear of death and remorse of conscience and from the apprehension of future punishment.

22. Did God leave mankind to perish in this estate?

No; God, out of His mere good pleasure and love, did provide salvation for all mankind.

23. How did God provide salvation for mankind?

By giving His Son, who became man, and so was and continues to be, both God and man in one person, to be a propitiation for the sins of the world.

These defendants aver that in the year 1903 the Presbyterian Church in the United States of America made a "Declaratory Statement" in reference to Chapter 3 and to Section 3 of Chapter 10 of its Confession of Faith and added two new chapters of the book, there by constituting what is called the "Revision of 1903." It is not believed, however, that the said statement made any change or alteration in the original meaning of the objectionable parts of the Confession of Faith referred to therein, or that such statement and the added chapters rendered that book any less Galvinistic than it was in 1810, when the Cumberland Presbyterian Church was organized. Indeed, that statement does not purport to be more than mere explanation, which could have been made as well and as consistently in 1810 as in 1903, the English language in which the Westminster Confession of Faith was written being the same all the time. Besides, it is logically impossible that it should have changed and altered the true meaning of the original book whose language remained unchanged and unaltered.

Moreover only a few sections are referred to in that statement, while in fact the Calvinistic doctrine with its logical sequences, so objectionable to Cumberland Presbyterians and so carefully excluded by them from their Confession of Faith in 1883, "pervaded the whole system of theology formulated in that book,"—the Westminster Confession of Faith. Nor was the Large Catechism or the Shorter Catechism, though equally objectionable to Cumberland Presbyterians and equally antagonistic to their written Confession of Faith, referred to

or in any manner changed or altered by the declaratory statement, or the added chapters. The original text of the Westminster Confession of Faith, as it existed in 1789 and 1810, has been reproduced literally in the book of 1906, and the meaning thereof is in no degree affected or intended to be affected by either the Declaratory Statement or the Chapters added in the same year. The General Assembly of the Presbyterian Church in the United States of America, in 1901 instructed its Committee on Revision, then appointed, to prepare amendments to certain portions of its Confession of Faith, "either by modification of the text or by Declaratory Statement, but so far as possible by Declaratory Statement, so as more clearly to express the mind of the Church, with additional statements concerning the love of God for all men, Missions and the Holy Spirit. It being understood that the revision shall in no way impair the integrity of the system of doctrine set forth in our Confession and taught in the Holy Scriptures." P. Min. 1901, p. 106; Ib. 1902, p. 87.

In response to that instruction the committee reported and the Church afterwards adopted the Declaratory Statement and the added chapters, being Chapters XXXIV and XXXV, already referred to. That no part of this revisionary matter was expected to impair, or to be allowed to impair, the existing system of doctrine of the Church, is shown by the resolution of appointment, just quoted; and that no such effect was produced in the minds of that committee and of the Church is shown by the preamble to the added chapters, and also by a resolution passed by the General Assembly in 1904, after the question of union and merger, now under consideration, was raised. That resolution was in the language following, to-wit:

"Resolved, 4. That the Assembly, in connection with this whole subject of union with the Cumberland Presbyterian Church, places on record its judgment, that the revision of the Confession of Faith effected in 1903, had not impaired the integrity of the system of doctrine contained in the Confession and taught in the Holy Scriptures, but was designed to remove misapprehensions as to the proper interpretation thereof." P. Min. 1904, pp. 119, 129; Successive Steps, 21 and 22.

These defendants aver that it cannot and does not satisfy them and other Cumberland Presbyterians to tell them that the founders of their Church labored under a "misapprehension as to the proper interpretation" of those parts of the Westminster Confession of Faith leading to the separation in 1810, or some of them, and that upon a proper interpretation of that book, without the change of a word in the text, it is now found to mean what neither of the two Churches understood it to mean prior to 1903, and that by this later interpretation the creeds of the two Churches are made identical, or substantially so, and that the Westminster Confession, though unchanged in its text, has the same meaning as the Cumberland Presbyterian Confession, adopted in opposition to it in the year 1883, as aforesaid.

They aver that no doubt existed about the true interpretation of the Westminster Confession in the year 1810. The Presbyterian Church and those who founded the Cumberland Presbyterian Church gave it the same interpretation at that time. Those founders did not voluntarily withdraw from the Presbyterian Church simply because of their interpretation of that book, but they were excluded from that Church because of their refusal to follow its teachings, as then under-

stood by that Church and by them. The interpretation given by them was the same as that then given by that Church, and which, it is believed by them, is the only correct interpretation of the language used, then and now. No well informed person would risk the assertion to a member of the Presbyterian Church in the United States of America that his Church has, by reason of the so-called revision, or otherwise, ceased to be Calvinistic in its system of doctrine, or that it is any less so than it was in 1789 or 1810.

There are many other material differences between the respective doctrines of these two Churches besides those heretofore indicated in the parallel quotations. These other differences are readily found in the printed Confessions of Faith. The one Confession is now as full of Calvinism as it ever was, and the other is as far hyper-Calvinism as it ever was.

They aver that no one has, or would, or could, or does more stoutly and more persistently deny and resent the assertion that the Presbyterian Church in the United States of America has eliminated from its system a single doctrine of the Westminster Confession than that Church itself. Only those former Cumberland Presbyterians who have gone into that Church make that assertion. Those to whom they have gone deny it (P. Min. 1904, pp. 119 and 129; Successive Steps, 21 and 22), and those from whom they have gone deny it. In the Address of the General Assembly of the Cumberland Presbyterian Church in May, 1907, to the General Assembly of the Presbyterian Church in the United States of America, is the following paragraph:

"A large percent of those leaving our communion for years have been misled into that course by the often repeated statement in public addresses and otherwise to the effect that your Church has abandoned the Westminster Confession of Faith as originally written, and come to the doctrines of our Church. In the 'Pastoral Letter' sent out by former Cumberland Presbyterians, as early as June, 1906, is found this statement: 'But what is still more important to us is, that the Presbyterian General Assembly has declared that its amended creed is substantially the same as our own.' And again, 'The Presbyterian General Assembly by adopting the joint reports has also, in substance, declared that our Confession of Faith correctly expresses the meaning of its own Confession of Faith, which we have adopted.' It is not believed that a majority of your Church has sanctioned these misleading and unjustifiable statements, or that your Church desires to occupy the attitude indicated before the world."

C. F. Min, 1907, p. 19; Successive Steps, 102-3. The reply was: We have not heard, until your communication announced it, that anybody had claimed or induced others to believe that the Presbyterian Church in the United States of America had abandoned the Westminster Confession of Faith. This is not true." P. Min. 1907, p. 279, Successive Steps, 113.

Defendants aver that the General Assemblies of the two Churches have never declared the respective doctrines of the two denominations to be identical, or substantially so. The joint committee simply reported on that subject, in very cautious language that, "it is mutually recognized that such agreement now exists between the systems of doctrine contained in the Confession of Faith of the two

Churches as to warrant this union—a union alike honoring to both.
 * * * * * It is also recognized that liberty of belief exists by virtue of the provisions of the Declaratory Statement," etc. P. Min. 1904, p. 137; C. P. Minn. 1904, p. 63a; Successive Steps, 16. The General Assembly simply adopted that language as a part of the Joint Report in which it appeared as a portion of the 1st section of the second grand division of that report called "Concurrent Declarations."

In 1906, the General Assembly of the Presbyterian Church, United States of America, passed the Moffat resolution, in which it is said that by adopting the Joint Report, "the two Assemblies in 1904 did declare that there was then sufficient agreement between the systems of doctrine contained in the Confessions of the two Churches to warrant the Union." P. Min. 1906, p. 211; C. P. Min. p. 117.

So then, defendants aver, the whole of the expression actually made on this subject is: (1) the statement in the joint report that there was such agreement as to warrant the union and that liberty of belief was allowed; (2) the adoption of that report, containing that statement, by the General Assemblies of the two Churches, and (3), the passage of a resolution by the Presbyterian Church in the United States of America construing the adoption of the joint report as a declaration by the two Assemblies that there was in 1904 sufficient agreement to warrant the union.

Defendants further aver that the polity of the Cumberland Presbyterian Church is also different from that of the Presbyterian Church in the United States of America in several important and essential particulars, especially in reference to the commingling of the white and black races in the Presbyteries and Synods and General Assemblies. Negroes are not admitted as members in any of those judicatories of the Cumberland Presbyterian Church; but they are admitted in all of them by the Presbyterian Church in the United States of America—in its General Assembly upon exact equality with white members, and in its Presbyteries and Synods with certain doubtful provisions for separation of the two races at the discretion of the General Assembly and upon its order. Those provisions in reference to the separation of the races in the Presbyteries and Synods were brought about by the first recommendation in the joint report on union and reunion, as appears from the minutes of the General Assembly of the latter Church in the year 1904.

14. Defendants further answering aver that "Rules of Order" are contained in the "Confession of Faith" and "Government" of the Cumberland Presbyterian Church beginning on page 161; and that those rules, among other things, prescribe the duties of the Moderator of the General Assembly; and that among his duties there prescribed in Section 9 on page 162 is the following:

"To give on all questions a clear and concise statement of the object of the vote, which, being taken, to declare how the question has been decided."

Defendants aver that, when the question of Union, known as the Templeton Resolution, was presented and was being argued before the Assembly, for several days, a motion was made on Wednesday morning that the roll be called and the vote taken on Thursday morn-

ing. This motion was carried and the time for taking the vote was accordingly set for Thursday morning, and it was accordingly announced that the vote would be taken the next day. Subsequently, the Unionists, conceiving that great advantage would be gained by taking the vote at the night session of Wednesday, reset the time for taking the vote. This resetting of the time was done after the Assembly had met at night. The change was a great surprise to those who opposed the Union, because many of those who expected to vote against the resolution, some of them being old men, had failed to return to the Hall for the night session. But, so it was that the vote was taken Wednesday night.

Defendants say that this was done by the Unionists for the fraudulent purpose of depriving the side opposing the Union of enough votes to defeat the Templeton Resolution.

Defendants aver that when the vote was about to be taken late Wednesday night, a member of the Assembly, named Russell, arose at his place in the Assembly, and requested the Moderator, as he had a right to do, to state for what purpose the vote was being taken—whether it was a recommendation of the Union, or a mere submission of the Union to the Presbyteries, also stating that there were eight members immediately around him who were opposed to the Union, but who were willing that the question should be submitted to the Presbyteries, and that, if a vote in the affirmative meant that the Assembly recommended the Union, he and his associates, eight in number, would vote against the resolution. The Moderator, after conference with the Stated Clerk, who was a Unionist, stated to the member, in the hearing of the Assembly, that a vote in the affirmative meant merely a submission of the question to the Presbyteries without any recommendation. Later on, when there was some further discussion, another member asked the Moderator the same question, in substance, stating that he and three others were opposed to the Union, but were willing to submit the question to the Presbyteries. The Moderator gave him, in substance, the same answer as he had given Mr. Russell.

Defendants believe and say that this statement by the Moderator was a misstatement of the effect of the vote, and that twelve members of the Assembly were thereby induced to cast their votes for the resolution, when, if they had been correctly informed, they would have voted against the resolution, and it would have been lost.

Defendants aver that the effect of the misleading statement, and the changing of these twelve votes, was to carry the Templeton Resolution. If only three of these votes had been cast in the negative (and all would have been so cast, but for the foregoing statement of the Moderator), the resolution would have failed, and the scheme would have been defeated.

It is now claimed by the complainants, and those whom they represent, that, contrary to the ruling and statement of the Moderator, the passing of said resolution was a recommendation of the basis of the alleged Union by the General Assembly upon the alleged passage of the Templeton Resolution at Dallas, in 1904, and that the action then taken became effective as a recommendation.

Defendants aver that as a part of the purpose to carry the scheme through, a majority of the Presbyteries at all hazards, it was ar-

ranged that several ministers in the Cumberland Presbyterian Church should resort to double voting, and they did so, voting in one Presbytery and then at a later day in another in favor of the scheme.

Defendants aver that the aforesaid change of the time of voting, the mis-statement by the Moderator of the object and meaning of the vote taken, the double voting of the ministers, were fraudulent, and that such acts, as well as the other several matters heretofore averred in this answer against the validity of the said plan or scheme of union, rendered the whole action taken for the adoption of said scheme or plan null and void.

15. These defendants further answering aver that E. D. Pearson, W. P. Stark, David F. Manning, Peter H. Rea, George H. Alt-house, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell are, for the reasons now about to be stated in this answer, necessary and indispensable parties to said bill of complaint, and that the court should not and cannot proceed to a determination of the controversy here involved unless they are made parties hereto; that all of them are citizens and residents of the State of Missouri, and some of them are inhabitants of and residing in the western Division of the Western Judicial District thereof.

The Missouri Valley college mentioned in the bill of complaint is a corporation created and organized under and by virtue of the laws of the State of Missouri, and as such became incorporated on June 30th, 1888.

The Articles of Association which constitute its Charter provide for a Board of Trustees, thirteen in number, which was to be a continuous body, whose members and their successors were to be elected from time to time; ten of them by the Synod of Missouri of the Cumberland Presbyterian Church, and three of them by the Synod of Kansas of the said Cumberland Presbyterian Church. By said Charter the said E. D. Pearson, Peter H. Rea, John C. Cobb, A. C. Stewart and W. T. Baird were members of the first Board of Trustees. By the terms of said Charter the said Board of Trustees were to have the general management and control of the business of said College, and might, in their judgment, use such portion of the interest of the educational fund mentioned in the bill of complaint and all such additional contributions thereto as might not be necessary for the payment of salaries of the professors in said College, for such other support of said College as might be directed by said Trustees. The powers and duties of said Board of Trustees were, in the language of the Charter itself, declared to be as follows:

"1. The Board of Trustees shall adopt all reasonable by-laws, not inconsistent with the laws of the land and these articles of association, and may prescribe rules and regulations for its officers, agents and employees.

2. The Trustees shall meet at least once in every year at Marshall, Missouri, and oftener if deemed best. Require written reports from officers, agents and employees of the conditions, necessities and prospects of the business and matters of the college committed to them respectively.

3. The Board of Trustees shall employ a faculty consisting of a President and such other professors, assistants, and teachers as

may be deemed necessary, and agree upon and fix a salary of compensation to be paid to each.

4. The Board of Trustees are authorized to employ all such workmen, agents, mechanics, and employees as may be necessary in the prosecution of the purposes of said association, and to fix their compensation, provided that they shall not mortgage or otherwise encumber any grounds, buildings or other property of the college for any purpose whatever.

5. The Board of Trustees shall fix the amount of fees, tuition and other charges of students and other persons seeking admission to or instructions in said college or any department thereof.

6. Said Board of Trustees shall, upon the recommendation of the faculty, confer all academic degrees upon graduates and post-graduates of said college, and upon other worthy persons distinguished for culture and learning, provided that no honorary degrees shall be conferred relating to any department which is not at the time being actually taught in said college.

7. Said Board of Trustees shall make a report in writing to each of the Synods within said states at their respective annual meetings of the condition, prospects and necessities and wants of the college, showing the number, positions of the faculty, the number, age, sex, advancement, time of attendance of pupils for the collegiate year last past. And also a particular and detailed statement of all moneys received, from whom, and on what account, with a like statement and account of all disbursements, and also a statement and account of the investment of the said endowment fund and of each and every fund under its management and control with the proceeds and income of each.

8. That said Board of Trustees shall keep all permanent funds of said association invested so as to secure and yield the largest income thereon, and they shall only apply the profits and income thereon together with the income arising from tuition fees and other charges and resources to meet the current expenses of said college, and are hereby expressly forbidden to encumber, charge, use or apply in any manner the principal of any endowment fund or other permanent fund for any debts or obligation of said college, and this shall be notice to all persons dealing with said Board and its agents that all such permanent funds are not to be holden for any liability of said college, but it shall be the duty of said Board to apply all profits and income of said funds together with the ordinary income from tuition fees and other sources to the payment of any such liability."

A copy of said Charter, marked "Exhibit A" is attached to this answer and made a part hereof.

The said persons whom these defendants aver are indispensable parties to this suit are acting as such Board of Trustees of said College under and in pursuance of their election as such by the Synod of Missouri of the Presbyterian Church in the United States of America and are recognized as such Trustees by said Synod, and the Synod of Kansas of said Presbyterian Church in the United States of America, and as such declare their allegiance to said Synods. Said persons claim, assert and declare that they constitute the only legal Board of Trustees of said Missouri Valley College.

Under said claim they are, in the name of the said Missouri Valley College, in actual possession of the property of said College described in the bill of complaint, managing and controlling the same, and performing and assuming to perform the duties imposed upon the Board of Trustees by said Charter of said Missouri Valley College. They dispute the title of the defendants, J. W. Duvall, B. F. Garst, C. P. Grimes, C. H. Harrison, O. G. Dameron, J. E. Eberts, G. W. Freeman, T. C. Newman and William Hinton as Trustees of said Missouri Valley College, and exclude them from any control of its property, or from any voice in the management of its affairs. The defendants whose title is thus disputed, assert and claim that they constitute the only legal Board of Trustees of said Missouri Valley College, and exclude them from any control of its property, or from any voice in the management of its affairs. The defendants whose title is thus disputed, assert and claim that they constitute the only legal Board of Trustees of said Missouri Valley College, and that as such they, instead of the said persons now in possession claiming to be trustees, are entitled as the only legal trustees, to the possession of the property of said College and the control and management of its affairs.

The purpose and object of the bill of complaint is by the decree of this court to have established and declared valid, the title of the said persons whom these defendants aver are indispensable parties to the bill as members of the Board of Trustees of said Missouri Valley College, and to confirm and have established as valid, their claim as Trustees to the possession of the property of the College and their claim to the exclusive management and control of its affairs, as against the claim of the said defendants, J. W. Duvall, B. F. Garst, G. P. Grimes, C. H. Harrison, O. G. Dameron, J. E. Eberts, G. W. Freeman, T. C. Newman, and William Hinton that they (the persons last named) are the only legal Trustees of said Missouri Valley College, and as such are entitled to the possession of its property and the control and management of its affairs.

The bill of complaint is filed, and this suit is prosecuted for the benefit and in the interest of the said persons averred by these defendants to be indispensable parties to the bill of complaint. Said persons are in fact, actively promoting the prosecution of this suit. There is not, and has not been for more than five years past any Synod of Kansas of the Cumberland Presbyterian Church. The defendants, J. W. Duvall, B. F. Garst, G. P. Grimes, C. H. Harrison, O. G. Dameron, J. c. Ebert, G. W. Freeman, T. C. Newman and William Hinton were, in accordance with the provisions of the Charter of said Missouri Valley College, duly elected members of said Board of Trustees by the Synod of Missouri of the Cumberland Presbyterian Church, and in their claim to be the legal Trustees of said Missouri Valley College, sustain the same relations and connection with the Cumberland Presbyterian Church and the Missouri Synod of that Church, as do those said persons whom these defendants aver are indispensable parties to this bill sustain to the Presbyterian Church in the United States of America and the Missouri Synod thereof.

The interests of those said persons whom these defendants aver to be indispensable parties to this suit are therefore directly opposed

to the interests of the defendants, J. W. Duvall, B. F. Garst, G. P. Grimes, C. H. Harrison, O. G. Dameron, J. E. Eberst, G. W. Freeman, T. C. Newman and William Hinton. If this suit proceeds to a decree, the right of one Board of Trustees to the possession of the property and to exercise the functions conferred by the Charter of the College upon the Board, will be established and declared, and the members of the other Board will be decreed to have no right to such possession or to exercise such functions. Therefore the members of both Boards of Trustees are indispensable parties to this action and they pray the court to make an order that they be made parties hereto.

15. These defendants further answering aver that following the attempt at union and merger of the Cumberland Presbyterian Church and the Presbyterian Church of the United States in America mentioned in the bill of complaint, these defendants and a very large number of other members of the Cumberland Presbyterian Church in the State of Missouri refused to acquiesce in said scheme of union, and to become members of the Presbyterian Church in the United States of America, or to willingly surrender to said last named Church or to those former members going from them the house of worship and other property the title to which was held and conveyed for the use and benefit of the local Congregations of the Cumberland Presbyterian Church; whereupon certain of those persons who did acquiesce in the said scheme, some of whom had been members of the said Cumberland Presbyterian Church in the City of Warrensburg in the State of Missouri, and some of whom had been members of the Presbyterian Church in the United States of America brought suit on the 10th day of August, 1906, in the Circuit Court of Johnson County, State of Missouri, in their own behalf and in behalf of all members of the Presbyterian Church in the United States of America, and especially in behalf of those members of said Church who formerly belonged to the Cumberland Presbyterian Church and who adhered to the said Presbyterian Church in the City of Warrensburg, Missouri, against other persons, members of the Cumberland Presbyterian Church at said Warrensburg, Missouri, who refused to acquiesce in the said scheme and to become members of the Presbyterian Church in the United States of America, making them defendants as in their personal capacity and also as representatives of other persons not named who were non-acquiescing members of the Cumberland Presbyterian Church at said Warrensburg. The style of said cause was as follows:

"C. A. Boyles, B. L. Seawell, C. D. Middleton, E. B. Stockton and A. D. Redford, being the elders of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, W. C. Kapp, F. M. Walters, John C. Scroggs, who with the aforesaid plaintiffs constitute the elders of the Presbyterian Church in the United States of America, and Samuel Garvin, Pastor of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and now Pastor of the Presbyterian Church in the United States of America, C. O. Ozias, S. H. Coleman, G. W. Martin, Vance J. Day, Sam T. Bratton, J. R. Rothwell, Edward Beatty, and Grover Gillium, being deacons of what was the Cumberland Presbyterian Church at Warrensburg, Missouri, who with G. M. Hibert, William Shockley, A. J.

Hutchison, and E. L. Thurber, are now deacons of the United Church, that is, the Presbyterian Church in the United States of America, at Warrensburg, Missouri, all of said Elders, deacons and Pastors, plaintiffs, suing not only in their individual capacity but in their official and representative capacity as set forth in the caption and in this bill, and in behalf of all the other officers and members of the Presbyterian Church in the United States of America, situated at Warrensburg, Missouri, they being too numerous to name herein, Plaintiffs, versus, J. L. Roberts, W. K. Morrow, and T. J. Summers, the former two being Trustees of what was the Warrensburg Cumberland Presbyterian Church, and together with one F. M. Cockrell, had held the title to said church property, and Jay Ray Ramsey, a Deacon in what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and all other officers and members of the Cumberland Presbyterian Church who renounced or refused to recognize the United Church known as the Presbyterian Church in the United States of America, they being too numerous to mention herein, defendants."

The amended petition or bill in that cause upon which the same was tried described certain real estate situated in said City of Warrensburg which had been, as the petition stated, conveyed many years before to certain persons (two of them being defendants in said suit) as trustees for the Cumberland Presbyterian Church of Warrensburg Congregation, and averred that on said real estate was situated the church building in which was contained the church property of what was the Cumberland Presbyterian Church of Warrensburg, Missouri.

It was further alleged in said amended petition or bill that the defendants or some of them were in the actual possession of said real estate and said Church as such Trustees and that they refused to permit the plaintiffs in said cause, or those whom they represented, to use the same.

Said amended petition or bill set out the proceedings in the General Assemblies, Presbyteries, and Synods of the Presbyterian Church in the United States of America and of the said Cumberland Presbyterian Church claimed by the plaintiffs therein to have resulted in said alleged union of the two Churches in substantially the same manner as they are averred in the bill of complaint in this cause. Said amended petition or bill averred in substance that while the plaintiffs therein asserted that the union of the two Churches had been legally effectuated and that the said Cumberland Presbyterian Church had, by said union, ceased to exist, and that the Church property in said Warrensburg which had once been devoted to the use of the said Cumberland Presbyterian Church had by operation of law become devoted since said alleged union to the uses of the said Presbyterian Church in the United States of America, and that the defendants in said bill and those whom they represented, disputed the fact that any union of the said two Churches had been consummated; that they denied the validity of the proceedings which were claimed by the plaintiffs to have resulted in such union; and that they claimed that the Cumberland Presbyterian Church still existed, and that the church property in Warrensburg was still as

before devoted to the uses of the said Cumberland Presbyterian Church.

The controlling question in said cause was whether the alleged union of the two Churches had in fact been accomplished, and was legal, valid and effectual; the plaintiffs asserting its legality and validity, and the defendants disputing the same. The controlling question in said cause was the same as the controlling question in the suit in this court in which the bill of complaint is filed.

The prayer of said amended petition or bill was as follows:

"Plaintiffs therefore pray that all of the ministers, officers, members, boards, committees, employees and agents of every character and description who are or claim to be part of the so-called Cumberland Presbyterian Church of Warrensburg, Missouri, be made defendants herein enumerated, and that said named defendants to this bill and be represented by name defendants herein enumerated, and that said named defendants be required to defend for themselves and their unnamed co-defendants.

Wherefore in consideration of the premises plaintiffs pray that the defendants named in the caption of the bill be required to make defense of this bill; that on final hearing decree be rendered declaring that said union between said Churches was legally formed and is valid; that all of the property rights possessed by the Cumberland Presbyterian Church or any of its judicatories, or congregations passed by operation of law as a result of the union with said judicatories or congregations into the United Church; that all ministers, officers and members belonging to what was the Cumberland Presbyterian Church and adhering to the Presbyterian Church in the United States of America, constitute the true and lawful members of the various congregations, sessions, boards of Deacons of the various congregations and that all who have renounced or shall renounce said Union Church, have ceased, or will cease to be members of the Congregations, Sessions, Boards of Deacons, Presbyteries or Synods which formerly constituted the Congregations, Boards of Deacons, Presbyteries or Synods of the Cumberland Presbyterian Church; that all Elders and Deacons so renouncing the United Church have or will cease to be Elders or Deacons in said congregations, and cease to have any rights to control or hold possession of any property belonging or appertaining to their respective Congregations; that all Pastors of Churches so renouncing the Union Church have or will vacate their respective Pastorates, and that all such renunciators will forfeit all their rights of property and all other rights and privileges as members, officers, or ministers in said judicatories; Plaintiffs especially pray that the Elders loyal to the United Church of Warrensburg, Missouri, be placed in the immediate possession of the Church property at said place, and their rights be declared and their possession be protected.

And further pray the court to enjoin the ministers, officers and members of the Cumberland Presbyterian Church at Warrensburg, Missouri, who repudiate and renounce the action of the General Assembly, and the Presbyteries of said churches in agreeing to and forming a union with the Presbyterian Church in the United States of America or who renounce the United Church resulting from said Union known as the Presbyterian Church in the United States of

America, together with all their associates, confederates, agents and representatives, and that said persons be enjoined from doing the following things, to-wit:

FIRST: From interfering with or molesting the Pastors, Elders, Deacons, Church Members, or other Ecclesiastical agencies who adhere to and recognize said Union Church in the use, enjoyment, possession and exclusive control of all houses of worship, parsonages, endowment funds or other property or effects which belong to the Cumberland Presbyterian Church or any of its Boards, Committees, Judicatories, Congregations or Institutions, or held in trust for them.

SECOND: From using the name of the Cumberland Presbyterian Church as the name or any part of the name of any of their organizations, congregations, sessions, Presbyteries, Synods, General Assemblies, Boards, Committees or other Ecclesiastical Judicatories, Institutions or Agencies in connection with the claim on the part of said Judicatory, organization or agency, or any one acting for it, that it is a judicatory organization or agency of the original Cumberland Presbyterian Church as organized in 1910 as described in said deeds.

And plaintiffs pray for such other and further relief as the court in equity and good conscience may find them entitled to. Signed:

J. W. SUDDATH,
W. M. WILLIAMS,
O. L. HOUTS,

Attorneys for Plaintiffs."

A copy of said amended petition or bill is hereto attached as Exhibit "B" and made a part of this answer.

Said cause having removed to the Circuit Court of Cooper County, Missouri, by change of venue, upon final hearing said last named court rendered a decree for the plaintiffs in said suit and against the defendants. Whereupon the defendants took and prosecuted their appeal from said judgment and decree to the Supreme Court of the State of Missouri. Said last named court, after hearing and considering the appeal, rendered its judgment and decree in said cause on the 8th day of June, 1909. Said judgment and decree of the said Supreme Court reversed said judgment and decree of the Circuit Court of Cooper County, and remanded the cause with directions to said Circuit Court to dismiss the plaintiffs' petition and enter judgment in favor of the defendants therein and against the plaintiffs for all costs. A copy of said judgment and decree of the Supreme Court is hereto attached as Exhibit "C" and made a part of this answer.

At the same time, as required by law, the Supreme Court of Missouri filed its opinion in writing in said cause by which it was declared and determined that said attempted Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church and the proceedings by virtue of which said union was claimed were null, void and of no effect, and that the property of the Cumberland Presbyterian Church and property held in trust for its use or its benefit or the promotion of its doctrines was still held for the same purpose for the benefit of those members of the Cumberland Presbyterian Church who had refused to acquiesce in said scheme of union; and that therefore neither the Presbyterian

Church in the United States of America, nor any of its judicatories, general assemblies, synods, presbyteries, boards and congregations or members of said church had, by virtue of said pretended union, any interest whatever in any such property. And a motion for a re-hearing of said cause was denied by said Supreme Court October 22nd, 1909.

The opinion of said Supreme Court on hearing and on denying the motion for a re-hearing is officially reported in volume 222 of the report of the opinion of said Court at page 613 and a copy thereof is herewith filed and marked Exhibit "D" and made a part of this answer

These defendants aver that the complainants and those for whom they sue, as appears from the bill of complaint, have no interest in the property of the Missouri Valley College unless and except by virtue of the said scheme of union and merger which has by the court of last resort of the State of Missouri, whose jurisdiction was invoked in the cause aforesaid by persons claiming the validity of said union and merger and in the same category with the complainants, been adjudged invalid, null and void; the complainants bring their bill of complaint for the obvious purpose of defeating the result of that decision and nullifying the same; they now, by this suit, invoke the jurisdiction of this court in order to reopen a controversy practically settled already by the Supreme Court of the State of Missouri within whose territorial jurisdiction the property involved is situated; they have intentionally and improperly omitted to make as parties to this suit, the said persons whom this answer avers are indispensable parties thereto, because if they were made parties as they should be, the case would not present a controversy between citizens of different states; the controversy should be one between the persons whom they have so omitted to make parties, citizens of the State of Missouri on one side, and the defendants, J. W. Duvall, B. F. Garst, G. P. Grimes, C. H. Harrison, O. G. Dameron, J. E. Eberts, G. W. Freeman, T. C. Newman and William Hinton, also citizens of the State of Missouri on the other side. These defendants say that the complainants should not be permitted improperly to make and join and omit parties as they have done in this case for the purpose of presenting a supposed and unreal controversy between citizens of different states and to create thereby a cause cognizable in this court, when in fact as shown in this answer, the real controversy is between citizens of the same state, and they ask and pray that upon final hearing the bill of complaint be dismissed for said cause.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged; without this, that there is any other matter, cause or thing in said complainants' bill of complaint contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

85. The Joint and several answer of defendants in case of James M. Barkley, et al., Complainants, against Hayes et al., Defendants,

(Omitting Caption)

These defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill of Complaint and the amendments thereto contained, for answer thereto, or so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

1. They deny that the controversy involved in this suit is wholly between the Complainants James M. Barkley and William H. Roberts, on the one hand, and the defendants named in said Bill of Complaint and the several amendments thereto; they admit that the amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars (\$2,000.00), but they deny that the suit arises under the constitution and laws of the United States.

2. These defendants admit that the "Presbyterian Church," mentioned in the Bill of Complaint, is and has been for years a voluntary religious association and organization; as to whether one million and three hundred thousand individuals profess the Presbyterian faith and are communicants of the Church, these defendants have no knowledge or information; they admit that prior to May, 1906, it existed as a voluntary association; but they deny that at that time or at any other time it became merged with the Cumberland Presbyterian Church and that since that time it has, in the name of the Presbyterian Church in the United States of America, existed as a consolidated or merged association. They admit that the complainants are members and communicants of the said "Presbyterian Church"; that the Complainant Roberts was at the time of the filing of the bill and still is an officer of its General Assembly, and that the Complainant Barkley was at the time of the filing of the bill Moderator of its General Assembly, but they deny that he is at the present time an officer thereof. These defendants deny that this suit is brought by the complainants on behalf of any other members of said Presbyterian Church, or that they have any right to bring this suit on behalf of any such other members; they deny any right existing in the complainants or either of them, either individually or as officers of such General Assembly, to institute this suit, neither of them has any such interests in the matter as gives them the right to institute or maintain this action; they have no such connection with the said Presbyterian Church or its General Assembly or with the membership of such Presbyterian Church as entitles them to institute this suit for any of the alleged one million two hundred thousand members, non-residents of this state, or any interest in any of the property, real or personal, involved in this suit, or any interest entitling them to maintain this or any other action in relation to the title thereto or the possession thereof; neither has the Complainant Barkley, as Chairman of the so-called Executive Commission mentioned in the Bill of Complaint, or the said Complainant Roberts as Secretary of said so-called Executive Commission, any interest in the

property involved in this controversy which entitles them to institute and maintain this suit; nor has said so-called Executive Commission, mentioned in the Bill of Complaint, whatever that may be, any interest whatever in any of said property; these defendants deny that the membership in the Presbyterian Church is by contract between the members evidenced and governed by the Constitution, Rules and Regulations, as construed, recognized and enforced by the authorities of this organization; but they admit that the Presbyterian Church has a Constitution, Rules and Regulations.

3. These defendants further answering admit that the "Cumberland Presbyterian Church" was for ninety-six years before the year 1906, ever since 1906 has been and still is a voluntary religious organization in the United States with largely more than one hundred and seventy-five thousand members and communicants; of whom defendants are still and claim to be a part of said members and communicants; they deny that any merger and amalgamation of the Cumberland Presbyterian Church with the said Presbyterian Church took place in 1906, or at any other time; they admit that they claim that the voluntary organization described as the Cumberland Presbyterian Church still exists and that they claim that the alleged merger and amalgamation is ineffectual, null and void; these defendants admit that they respectively are members of the different local congregations of the Cumberland Presbyterian Church in the State of Missouri whose property and funds are involved in this suit; these defendants deny that any account should be taken in this action of any property in Missouri held in trust for the Cumberland Presbyterian Church or that the complainants have any interest therein; these defendants deny that they respectively or the other members of their respective local congregations or any persons within their knowledge are acting in concert with persons who are members of other congregations of the Cumberland Presbyterian Church in excluding members of the Presbyterian Church from the use of any property in Missouri held in trust for the Cumberland Presbyterian Church.

4. These defendants further answering deny that the Presbyterian Church, in its present organization and as it existed prior to the alleged merger, is subdivided, for the purpose of more convenient worship, government and control, into local congregations worshipping in structures located upon property held for the purpose; or that such subdivision was assented to by all the members thereof. But these defendants admit that the membership of the Presbyterian Church at present and prior to the time stated was made up of numerous local congregations, worshipping in local structures belonging to such congregations respectively; and they deny that the Church at large or any of the courts thereof or the membership of any other local congregation had any interest or right of control in the property of any particular local congregation, unless the deed or other instrument conveying the property gave such interest or right of control. Defendants deny that the local property, held by the said local congregations as aforesaid, was acquired with funds contributed for

the purpose and held by the trustees for the said Churches under the direction, control and management of the Presbyterian Church; and they deny that the Presbyterian Church was or is the real owner of the equitable title thereto, and that it only permitted, for the purpose of convenience, the immediate use thereof by such persons as may, under its rules and subject to its direction, be permitted to there worship and be communicants. Defendants deny that this property is held in trust for the teaching by the church of such creed and doctrines as are from time to time fixed, determined, amended and promulgated by the Judicatories mentioned in the bill, in any other sense than that the property is held in trust for the use and benefit of the particular local congregation to which and for which it is conveyed.

5. The defendants further answering admit that the Presbyterian Church, existing under what is known as the Presbyterian form of government, has now and prior to the time of the alleged merger did have a written Constitution establishing a gradation of Church Courts, Judicatories, Presbyteries, Synods, and General Assembly, and that each of them, in the order named, has such control of the other as is prescribed in the Constitution, but not otherwise. They admit that the General Assembly is the highest court of the Church organization. They admit that the Complainant Barkley was Moderator and Complainant Roberts, Stated Clerk of the General Assembly of the Presbyterian Church at the time the bill in this case was filed. They know nothing about the alleged Executive Commission, or whether it is in existence or not, or any office, or whether the Complainants Barkley and Roberts are officers thereof, as stated in the bill; therefore, they make no admission in reference thereto but call for proof. Defendants deny that the said complainants as officers and members of the Presbyterian Church are truly representative of all the members of said Church, or that they have any right in their official, individual or representative capacities to maintain this suit. Defendants deny that the Courts and Judicatories of the Presbyterian Church have any right or power to finally and exclusively determine for all those who belong to the Presbyterian Church all matters of creed and doctrine, church law and government, ecclesiastical control and rights of membership; or use to which the property may from time to time be put, or deciding what, if any, changes in creed and doctrine can be made, or when the same have been made, or to what extent members are bound thereby, or when members have seceded from the Church, or when they lose their membership or interest therein. Defendants aver that those Courts or Judicatories have only such powers as are conferred upon them by the Constitution of the Church. Defendants admit that no member of the Church, or any local congregation thereof, has any interest in its property except as an incident to his membership in the organization. Defendants deny that the Presbyterian Church, has through the Church Judicatories aforesaid, a fixed interest in and to the properties, or any of them, described in paragraph 10 of the original bill or in any of the amendments thereto for all or any of the reasons stated therefor in the original bill, or for any reason whatever. Defendants deny that

the Presbyterian Church has full power of visitation or the right to correct any abuse in the use of the property, or to give such directions as are deemed proper as to the particular use which from time to time shall be made thereof; they deny that the reversionary right or interest, upon dissolution or disruption of the local congregation, is absolute in the Church itself at large, or that it takes the property with the absolute right of disposal thereof.

6. These defendants further answering aver that they have not before them the Constitution of the Presbyterian Church and, therefore, are not able to admit or deny the accuracy of the statements made in paragraph 6 of the original bill and in the subdivisions thereof, with reference to the powers, rights, duties, jurisdiction and composition of the association, the Presbytery, the Synod or the General Assembly of that Church; therefore, they call for proof as to those matters. They deny that any rights stated in said paragraph 6 to exist in either of said bodies, even if they exist in them, are vested in them by virtue of any contract made by the members or by any contract of membership; and they deny that any member of the Church agreed that any of the questions mentioned in subdivision (d) of said paragraph 6 should be determined or decided by the tribunal or in the manner stated in said subdivision (d), and in no other manner or by no other tribunal.

7. These defendants further answering admit that the Cumberland Presbyterian Church at all times, from its organization in the year 1810 to the present time, has had and they aver that it now has an organization similar to that of the Presbyterian Church in the United States of America, in that it had and has a gradation of Courts or Judicatories, called Church Sessions, Presbytery, Synod and General Assembly. But defendants deny that the members of the Cumberland Presbyterian Church ever made any such contract as that alleged in paragraph 6 of the original bill, or that the allegations of that paragraph are applicable in fact to the Cumberland Presbyterian Church or to the members thereof. Defendants admit that at the time of the alleged merger the Cumberland Presbyterian Church was made up of various local congregations, which worshiped in buildings and used property in different places in the State of Missouri, which buildings and property belonged to the particular congregations worshiping in and using the same respectively, as will be hereinafter more particularly stated. Defendants deny that all or any of this property was acquired by the Cumberland Presbyterian Church at large, or held in trust for it, and not to be used by those professing a particular creed or doctrine in existence at the time of its acquisition; and they deny it was to be used by and for the denomination whose doctrine and creed should be such as from time to time might be determined by the Judicatories of such church, or by its successor; and they deny that the said property was acquired and held so that if and when the Cumberland Presbyterian Church might be amalgamated and merged with another church the trust should pass to and become binding upon the merged body, or that each member of the constituent churches, so merged, had, by virtue of the

merger and his membership in the merged church, a direct and beneficial interest in the property, or that said property thereby became subject to the use of the united churches. The defendants aver, on the contrary, that the property held and used by the respective local congregations of the Cumberland Presbyterian Church belonged to those respective local congregations, and that the Church at large and the other local congregations of the Church, and the Courts and Judicatories of the Church had no interest whatever therein, except and unless expressly provided in the deed to the particular property. And they aver that neither the Church at large nor the Presbytery nor the Synod, nor the General Assembly of the Church had or has any right of control of any property of a particular local congregation, otherwise than as prescribed in the deed of conveyance of the property. The particular deeds under which the particular properties of the particular local congregations were and are held will be referred to more fully hereafter in this answer.

8. These defendants deny that the Presbyterian and Cumberland Churches, as then existing throughout the United States had substantially the same doctrine or creed; they deny that the members of each or either of those Churches had any contracts as between themselves, and they deny that in accordance with the provisions of any such alleged contracts or the provision of the Constitution, Rules and Regulations of either body, the two bodies entered into a contract as stated in paragraph 8 of the original bill; and they deny that any of the respective Presbyteries or General Assemblies of either of said bodies were authorized to act or bind all of the members of either of said bodies by any such contract as stated in said paragraph 8; they deny that the terms of the alleged contract were as stated in subdivisions (a), (b) and (c) of said paragraph 8, and these defendants deny that any contract of any nature whatever was entered into by and between said two bodies or churches, or by and between the respective Presbyteries and the General Assemblies of the two bodies or churches, or by said Presbyteries, or by said General Assemblies. Defendants will hereinafter set out fully the language of the scheme or plan of union erroneously called a contract in paragraph 8 of the Bill of Complaint.

9. These defendants deny that thereafter, or at any time, such steps were taken as were necessary to carry out or complete the said alleged merger; they deny that any merger was in fact carried out or completed; they deny that by any steps that were taken or by anything that was done, what had been two voluntary church organizations were made one; they deny that either of the separate church organizations before said alleged merger, by their respective judicatories, or by any other means, decided that the creed and doctrine of the two churches theretofore existing were those of the alleged new and amalgamated church; they deny that there became any new or amalgamated church; there was no amalgamation. On the contrary, the existence of the Cumberland Presbyterian Church continued and still continues in its integrity as it always had existed as an entirely distinct and separate church organization. These defendants admit that not only some, but a very

large number of the members of the Cumberland Presbyterian Church refused and still refuse to abide by or enter into said alleged new organization; they deny that such refusing members or any of them are seceders from said alleged new united church; these defendants deny that there is any united church, and they admit that such refusing members are not entitled to the benefit of membership in said alleged united church, nor do said refusing members desire any membership in said alleged uniting church. These defendants aver that they and the other refusing members have simply stayed where they were in the Cumberland Presbyterian Church.

10. These defendants, further answering, admit that at the time of the alleged merger, there were local congregations and church properties of the Cumberland Presbyterian Church at the places mentioned in subdivision (b) of paragraph 10 of the original bill and the amendments thereto; they admit that at these places not only some, but they aver, many members of the Cumberland Presbyterian Church and communicants of the local congregations have refused and do refuse to recognize said alleged merger as legal, but declare the same to be invalid; they deny that such members refuse to abide by any legal or valid ruling of the church judicatories of the Cumberland Presbyterian Church; they deny that such members refuse to accept the creed and doctrine set forth in any contract adopted by said churches. These defendants deny the existence of any contract or that any contract was adopted by said churches or either of them, or that any creed or doctrine was set forth in any such alleged contract; they deny that said members of the Cumberland Presbyterian Church, or any of them, seceded from the churches to which they belonged and still belong; they deny that church judicatories or any of them of the Cumberland Presbyterian Church have treated such members as seceders from the church and decided them to be such, or that they have no longer a membership therein. These defendants deny that such members of the Cumberland Presbyterian Church have conspired or confederated together, or agreed to act in common or in concert for any purpose; they admit that such members are keeping up, as they have a right to do, as legal, the separate organization of the Cumberland Church, which they say has never ceased to exist; they admit that such members of the Cumberland Presbyterian Church are attempting, as they have a right to do, to control and use, in their several localities, for the use of their several local congregations, the property owned by said local congregations, or held for their use and benefit; they deny that such members of the Cumberland Presbyterian Church have seized or attempted to seize any of said property, except by legal and lawful methods; they admit that said members of the Cumberland Presbyterian Church in their several congregations and localities in respect of church property of which they are, in such localities and always have been, in possession, do exclude therefrom and from the use thereof all persons who were at one time members of that church who have so far recognized the alleged merger, and treated the same as valid, as to enter and become members of the Presbyterian

churches was invalid and that the same had never been legally consummated; they claim that the Supreme Court of the State, in the case referred to, decided and determined that it might inquire into the question whether the tribunals of the churches acted within the powers conferred upon them, and whether such action was in accordance with the constitution and laws of the church; they also claim that the Supreme Court in said cause decided that it might and would inquire into the character of the creed and doctrine of the two churches and determine whether they were or were not the same or vitally different. These defendants do claim and aver that the proceedings relied upon to support the claim of the alleged merger and union were void and of no effect; that upon such determination by the Supreme Court of the State of Missouri it became the duty of all officers and members of the Cumberland Presbyterian Church, as well as the members of the Presbyterian Church in the United States of America, to abide by the same, so far at least as to recognize the fact—and it is a fact—and no longer dispute or contend to the contrary, that the title, both legal, beneficial and equitable, of all property, both real and personal, in the State of Missouri belonging before said alleged union, to the Cumberland Presbyterian Church, or any of the associations, organizations or agencies controlled by it, or in which it was beneficially interested, remains and continues vested in such church, its said organizations, associations and agencies precisely the same as before; and they do claim and aver that all such persons, members of the Cumberland Presbyterian Church, who did not so acquiesce and determine to abide by said judgment of the Supreme Court of the State of Missouri in the manner aforesaid and who did recognize as valid said merger and union become and are now members of the Presbyterian Church in the United States of America, did by such action relinquish and surrender all their right, title and interest in any property in the State of Missouri held or owned legally or beneficially by the said Cumberland Presbyterian Church, its organizations, associations or agencies, and no longer have any interest of any nature whatever in any of said property.

15. These defendants, further answering, do say in reference to the averments of subdivision (b) of said paragraph 13 of the original Bill of Complaint, that they do not admit that they make a claim in manner and form as therein stated; they do admit that the creed and doctrine of the Presbyterian Church in the United States of America, at the time of said alleged merger and union, was not and is not now the doctrine and creed of the Cumberland Presbyterian Church; they claim that there are vital differences between the creeds and doctrines of the two churches; in reference to the claim of these defendants, as to the respective interests in the property aforesaid of those who, after said alleged merger and union became members of the Presbyterian Church in the United States of America, and of those members of the Cumberland Presbyterian Church who denied the validity of said merger and remained in their own organizations, the defendants have already answered.

These defendants, while they admit that the complainants, and the persons whom they claim to represent, have the right and privilege to membership in any church of their choosing, deny that they enjoy that right under the Fourteenth Article of Amendment to the Constitution of the United States; they deny that under said amendment the complainants, or either of them, or any of the persons whom they claim to represent, have the right to contract for such membership with other members, or to have the church creed, doctrine or membership determined by the church authorities, or to have enforced any trust, upon which property is held, in such a manner as to be applied to the use of those who complied with the church rules and regulations or the creed or doctrine of the church, or as the same may be determined by the church authorities to exist, or to have the same enforced in any manner whatsoever; these defendants deny that the complainants, or either of them, or any of those persons whom they claim to represent, are entitled to invoke the protection of said amendment to the Constitution of the United States in this case for any of the reasons stated in the Bill of Complaint, or for any reason whatever; these defendants deny that any of the rights asserted by the Bill of Complaint to belong to the complainants, or either of them, or the persons for whom they say they sue, or any right whatever was denied to them in any manner whatever by the defendants or by the law of the State of Missouri, or the decision and opinion of the Supreme Court of the State of Missouri in said case of *Boyles et al. v. Roberts et al.*; these defendants do not admit any matters and things stated in said paragraph 13 of the bill of complaint, by way of argument or otherwise, except as they have admitted them in this answer to said paragraph 13.

(Paragraphs 16, 17, 18 and 19 of this answer are the same as paragraphs 11, y2, 13 and 14 of the answer in the case of the Synod of Kansas of the Presbyterian Church in the United States of America, against Missouri Valley College, et al., relating to the proceedings had in the different church bodies concerning the alleged union, and the validity thereof, and in the impeachment of the same, which answer is hereinbefore printed in full in this record, and the same is therefore not reprinted at this place in the record.)

20. These defendants further answering aver that for the reasons now about to be stated in this answer certain persons, to be named herein, are necessary and indispensable parties to the Bill of Complaint, and that the Court should not and cannot proceed to a determination of the controversy here involved unless they are made parties hereto; that all of them are citizens and residents of the State of Missouri and some of them are inhabitants of and reside in the Western Division of the Western Judicial District thereof; that all of said persons were, prior to the alleged merger and union referred to in the Bill of Complaint and its amendments, members of the Cumberland Presbyterian Church; some of them were, as will later in this answer more particularly appear, trustees or elders or deacons for said Church. All of them since said alleged merger and

union and now assert and claim the same to be valid and binding upon all who were, prior to the same, members of the said Cumberland Presbyterian Church; they assert that there is no longer any Cumberland Church; they have, since said alleged merger and union, been and are now members, and some of them, as will in this answer more particularly appear, are elders, deacons or other officers of the Presbyterian Church in the United States of America.

The dispute involved in this litigation, as respects each of the several properties referred to in the bill and its amendments, is in truth and in fact a dispute between two classes of persons residing in the respective localities of the properties; one class asserting the validity of said alleged merger and union, and claiming for themselves, as such, as a consequence thereof, the title, either legal, equitable or beneficial and the exclusive right to the possession, occupation, use and control of said property; the other class denying the validity and claiming for themselves, as such, the title, legal, equitable and beneficial, and the exclusive right to such possession, occupation, use and control. And the object of this suit is to obtain a decree, whose effect shall be to adjudge and confirm such title and right in that class which asserts such validity. The actual controversy is between these two classes; the real parties opposed to each other in said controversy are said two classes, and all of the persons composing said classes are citizens of the State of Missouri.

The persons so averred by this answer to be necessary and indispensable parties to this suit are respectively, as regards the several local congregations, Church properties and places mentioned in the bill and amendments thereto as truly representative of the class of persons who assert the validity of said alleged merger and union as these defendants are alleged by the bill and its amendments to be of the class of persons who dispute and deny the validity thereof.

No person has as yet been made a party to this suit as representative of any one of the class of persons in the State of Missouri who assert the validity of said alleged merger and union, and who are now members of the Presbyterian Church in the State of Missouri, and as such immediately, directly and locally interested in the several properties mentioned in the bill and its amendments, as have these defendants by said bill and its amendments been made parties as representative of the class of persons in the State of Missouri who deny and dispute the validity of said alleged merger and union, and who are now members of the Cumberland Church in the State of Missouri, and as such immediately, directly and locally interested in the several properties mentioned in the bill and its amendments.

These defendants aver that the names of the said persons who are such necessary and indispensable parties are the following: L. M. Morrow, David F. Manning, C. G. Duty, W. A. Young, J. W. Fuson, W. J. Bradshaw, John C. Cobb, Joseph H. Christy, William H. Jones, R. J. Lowe, C. W. Walker, J. F. Walker, George W. Rinker, J. F. Whitmire, H. L. Wilson, S. R. Wilgus, William S. Powell, Luke H. Moss, W. D. Boyer, Albert Howell, James Simpson, Carl Ludwick, William L. Haynes, John W. Ingram,

Oscar A. Mitchell, Charles Mertel, J. L. Cleland, John Newman, John McCammon, A. B. Fleegan, J. W. Burton, W. A. Landrum, C. W. Shaw, F. M. Hammett, W. S. Thomas, Thomas Shiflett, John Frazier, J. J. Kirkpatrick, William Pillers, Henry Kelso, A. L. Epperson, A. L. Whitehead, Louis Koppes, W. F. Johnson, N. A. Galbraith, John Buck, William S. Hyland, Henry Dark, J. T. Hughes, R. L. Crockett, Bruce Shepherd, J. H. Woodford, J. B. Wiley, D. L. Albin, L. B. McKean, W. R. Phipps, T. E. Whaley, P. D. Stringfield, Temple E. Bell, W. H. Smith, J. W. McDonald, E. S. Allen, J. E. Patton, H. Upp, E. William Hunley, A. N. Calhoun, D. L. Bradshaw, Buck Baber, David Craighton, William M. Hayter, S. S. Crawford, C. S. Hill, N. S. Thompson, Louis Redding, A. J. Williams, ——— Foster, C. L. Keaton, H. M. Maness, S. W. Ramsay, H. M. Davis, William H. H. Stephens, William K. Howe, Eugene E. Stringfield, William R. Russell, George Ward, William D. Maxwell, Robert Onstott, Bruce Mitchelhill, Hal F. Smith, J. R. Campbell, M. B. Shipp, Charles W. Sloan and Ernest Hockaday.

The respective relations of said persons to and their connection with the said controversy and the several properties in the bill and its amendments referred to are as follows:

The parts of Lot 105 East Marshall in the City of Marshall, Saline County, mentioned and described in the Bill of Complaint, constituted before said alleged merger and union, the main Church property of the Cumberland Presbyterian Church in said City of Marshall. A part of it was conveyed by deed dated July 3, 1889, to the defendant G. E. C. Sharp and other persons mentioned in the deed as "trustees of the Cumberland Presbyterian Church, of Marshall, Missouri, or their successor," and a part of it was conveyed by deed dated December 24, 1890, to said defendant Sharp and others mentioned in the deed as "trustees of the Cumberland Presbyterian Church, of Marshall, Mo." And up to the time of said alleged merger and union said property was occupied and used as a place of worship by the congregation of said Cumberland Presbyterian Church of Marshall. Before said alleged merger and union the said L. M. Morrow and David F. Manning (two of the persons averred by this answer to be indispensable parties to this suit) were duly elected by such congregation as such trustees in the place and as successors of certain others named in said deeds who had died, and that the said Morrow and Manning and the defendant Sharp were trustees at the time of said alleged merger and union.

Lot 7 and the east half of lot 8, in block 23, in English's Addition to the City of Marshall, mentioned in said bill, was a mission church property under the control and management and belongs to the main church congregation in Marshall heretofore mentioned. It was conveyed by deed dated September 2, 1899, to the defendant Sharp and other persons mentioned in the deed as trustees of the Cumberland Presbyterian Church at Marshall, Mo., and their successors forever.

Seventy-nine feet off the north side of lot 8, in block 2, in Haggins' Addition to the City of Marshall, mentioned in the bill, is the manse property of the said Marshall congregation, and was conveyed by deed dated October 8, 1903, to "the trus-

tees of the Cumberland Presbyterian Church at Marshall, Mo., and their successors." This property was also under the control of and belonged to the said main Cumberland Church congregation in Marshall.

The said Morrow and the said Manning assert and claim the validity of said merger and union and are now members of the Presbyterian Church, and elders and trustees thereof, and as such elders and trustees, with others who are the members of said Presbyterian Church and citizens of Missouri, are now in the exclusive possession of all said properties at Marshall, claiming the same by virtue of said alleged merger and union and excluding therefrom and from any use thereof the defendant G. E. C. Sharp and the defendant Hugh Hayes, both of whom are elders in the Cumberland Presbyterian Church at Marshall and the class of persons whom they represent as members of said Cumberland Presbyterian Church at Marshall, and who dispute the validity and assert the invalidity of said alleged merger and union, and all of whom are also citizens of the State of Missouri.

The said L. M. Morrow and the said David F. Manning are representatives of the class of persons who belonged at the time of the alleged merger and union, to the Cumberland Presbyterian Church of Marshall, and who now assert the validity of said merger and union and are members of the Presbyterian Church at Marshall, and are also representative of all the members of said Presbyterian Church.

The property referred to in the Bill of Complaint as described in Book 60, page 183, in the office of the Recorder of Deeds of Clark County, Missouri, is as follows:

All of lots numbered 14, 15 and 16, in block numbered 16, in the town of Revere. It was conveyed by the Revere Town & Land Company by deed dated April 5, 1889, to John Wade, Caleb Loomis and James H. Thompson, Trustees of the Cumberland Presbyterian Church Ebenezer Congregation of Revere of the County of Clark, State of Missouri, and to their successors. The church building used for the purpose of worship by the said Ebenezer Congregation is located on this property which is now in the possession and under the control of and used by the members of the Cumberland Church at Revere as a house of worship. The defendant J. F. Shepherd is a member and an elder of said Cumberland Church and a citizen of the State of Missouri.

At and before said alleged merger and union the said C. G. Duty (one of the persons averred by this answer to be an indispensable party to this suit) was also an elder in said Cumberland Church. Upon said alleged merger and union the said Duty claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said merger and union. He is a citizen of Missouri and resides at said Revere and is representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church at Revere and who now assert the validity of said merger and union and who now claim to be members of the Presbyterian Church, and as such entitled to

the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri.

The property referred to in the Bill of Complaint, as described in a deed recorded in Book W, at page 511, in the office of the Recorder of Deeds for Dent County, is in Dent County, Missouri, and is described as follows, to-wit: Commencing at the northwest corner of the east half of block No. 33, west side of the creek in the town of Salem; thence south 70 feet; thence east 50 feet; thence north 70 feet to the north line of said block; thence west 50 feet to the place of beginning.

Said deed was dated March 30, 1886, and conveyed the property to A. H. Clark, J. S. Wingfield and W. A. Young, Trustees of the Cumberland Presbyterian Church of Salem, and their successors.

The property referred to in the Bill of Complaint as described in a deed recorded in Book 39, at page 74, in the office of said Recorder of Deeds, is in Dent County, and is described as follows:

Beginning at a point on the north line of Lot 1, in Block 33, west side of the creek in Salem, that lies 52 feet west of the northeast corner of said Lot 1, Block 33; thence south 81 feet, 6 inches to the south line of said Lot 1; thence west 52 feet; thence north 11 feet, 6 inches; thence east 50 feet; thence north 70 feet; thence east 2 feet to the place of beginning.

Said deed was dated April 2, 1902, and conveyed the property to W. A. Young, J. H. Whitmire and the defendant Lee Cook, as Trustees of the Cumberland Presbyterian Church of Salem, and their successors.

The property described in said two deeds constituted at and before the said alleged merger and union, the church property of the said Cumberland Presbyterian Church of Salem, and was used and occupied by the members and congregation of said Cumberland Presbyterian Church as a place of worship.

The property referred to in the Bill of Complaint as described in a deed recorded in Book 31, at page 542, in the office of said Recorder of Deeds, is in Dent County and is described as follows:

All of that part of the west half of the southeast quarter of the southeast quarter of Section 13, Township 34, Range 6, described as follows, to-wit: Beginning 14 rods east of the northwest corner of said west half of the southeast quarter of the southeast quarter of Section 13, Township 34, Range 6; thence east 8 rods, with the north line of said land; thence south 10 rods; thence west 8 rods; thence north 10 rods to the place of beginning.

Said deed was dated January 15, 1895, and conveyed the property to W. A. Young, J. H. Whitmire and W. H. Hill, Trustees of the Cumberland Presbyterian Church of Salem, and their successors.

The property described in this deed constituted, at and before said alleged merger and union, the manse or parsonage of said Cumberland Presbyterian Church of Salem, and was used and occupied as such by the pastor of said Cumberland Presbyterian Church.

At and before said alleged merger and union, the defendant Lee Cook and W. A. Young (one of the persons averred by this answer to be an indispensable party to this suit), were trustees of and also elders in said Cumberland Presbyterian Church. Upon said alleged merger and union, the said Young claimed and still claims to have become a member of the Presbyterian Church, and asserts the validity of said alleged merger and union. He is a citizen of Missouri, and resides at said Salem and is representative of the class of persons who, at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church at Salem and who now assert the validity of said merger and union and who now claim to be members of the Presbyterian Church, and as such entitled to the exclusive use, occupation and control of said church and manse properties, and all of whom are citizens of Missouri.

The defendant Lee Cook was and still is a member and an elder of said Cumberland Church at Salem.

Said church property is in the possession of said W. A. Young and of the class of persons at Salem of which he is representative, as hereinbefore stated.

The said manse property is in the possession of the defendant Lee Cook and the class of persons at Salem of which he is representative, and who deny the validity of said alleged merger and union.

The defendant Lee Cook, and the persons belonging to said class of which he is representative, are all citizens of the State of Missouri.

The property referred to in the Bill of Complaint as described in a deed recorded in Book P at page 690 in the office of the Recorder of Deeds for Greene County, Missouri, is situated in Greene County and described as follows:

Beginning at the northeast corner of Lot 20 in Block 7, running north 3 poles for a beginning; thence north 4 poles and 3 links; thence west 4 poles and 14 links; thence south 4 poles and 3 links; thence east 4 poles and 14 links to the beginning, the same being in the northeast corner of Lot 13 in Block 7 of the plat of said City of Springfield. It was conveyed by deed dated December 1, 1866, to C. C. Williamson, G. F. Perkins, W. Dysart, S. F. Gibson, R. Y. Sims, C. B. Holland, Henry Westmoreland, William A. Norman, James Harkness and J. L. Caroon, trustees of the Cumberland Presbyterian Church.

The property referred to in the Bill of Complaint as described in a deed recorded in Book 82 at page 63 in the office of said Recorder of Deeds is situated in said Springfield and is described as follows:

Beginning at the northeast corner of the lot of the Cumberland Presbyterian Church situated on Olive Street on Lot No. 13 in Block 7; thence south with the west line of said church property 97 feet; thence west 25 feet; thence north 97 feet; thence east 25 feet to the place of beginning. The deed was dated March 1, 1889, and conveyed said property to the First Cumberland Presbyterian Church of Springfield, Missouri, which was then and is now a corporation created and existing under and by virtue of the laws of the said state.

The property referred to in the Bill of Complaint as described in a deed recorded in Book 89 at page 456 in the office of said Recorder of Deeds is situated in said Springfield and is described as follows: Beginning at the northeast corner of Lot 26 in Block 7; running north 3 poles for a beginning; thence west 4 poles and 14 links; thence south 15 feet; thence east 4 poles and 14 links; thence north 15 feet to the beginning point of said lot, being part of the original plat of Springfield, Missouri. The deed was dated September 6, 1890, and conveyed said property to the First Cumberland Presbyterian Church of Springfield, Missouri, a corporation, as hereinbefore stated.

At and for a long time prior to said alleged merger and union, the foregoing property situated in Springfield constituted the church property of the said First Cumberland Presbyterian Church at Springfield, and was in the possession of and used by the members and congregation of said Cumberland Church in that city as a place of worship.

At and before said alleged merger and union the said J. W. Fuson (one of the persons averred by this answer to be an indispensable party to this suit) was one of the trustees of said Cumberland Presbyterian Church at Springfield, and the said W. J. Bradshaw (another of the persons averred by this answer to be an indispensable party to this suit) was a member of said Cumberland Presbyterian Church. Upon said alleged merger and union the said J. W. Fuson and W. J. Bradshaw claimed and still claim to have become members of the Presbyterian Church, and assert the validity of said alleged merger and union. The said Fuson is now a trustee and elder in the Presbyterian Church at Springfield, and the said Bradshaw is also now an elder in said Presbyterian Church. They are citizens of Missouri and reside at said Springfield, and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Church at Springfield and who now assert the validity of said merger and union and who now claim to be members of the Presbyterian Church at said Springfield, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri. They and the said class of persons whom they are representative of are now in the exclusive possession, use, occupation and control of said church property and exclude therefrom and from any use, occupation and control thereof, the said defendant V. S. Bray and the class of persons of whom he is representative, who deny the validity of said merger and union and who at the time thereof were members of said Cumberland Presbyterian Church of Springfield, Missouri, all of whom are citizens of the State of Missouri.

The property in Lafayette County described in the Bill of Complaint was, before said alleged merger and union, conveyed to the trustees of the Cumberland Presbyterian Church of Odessa in said county, and their successors. It constituted the church property in Odessa which was used by the members and congregation of said Cumberland Church at that place as a house of worship. The defendant Daniel G. Wade is a member and elder

of said Cumberland Church at Odessa, and a citizen of the State of Missouri.

At and before said alleged merger and union the said John C. Cobb and the said Joseph R. Christy (two of the persons averred by this answer to be indispensable parties to this suit) were also elders in said Cumberland Church and trustees thereof. Upon said alleged merger and union the said John C. Cobb and Joseph M. Christy claimed and still claim to have become members of the Presbyterian Church and assert the validity of said merger and union. They are citizens of Missouri and reside at said Odessa and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Church at Odessa and who now assert the validity of said merger and union and who now claim to be members of the Presbyterian Church and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri. They, and the said class of persons of whom they are so representative, are now in the exclusive possession, use, occupation and control of said church property, and exclude therefrom and from any use, occupation or control thereof, the said Daniel C. Wade and the class of persons of whom he is representative who deny the validity of said alleged merger and union, and who, at the time thereof, were members of said Cumberland Presbyterian Church at Odessa, all of whom are citizens of the State of Missouri.

The property referred to in the Bill of Complaint and described in the deed recorded in Book 131, page 258, in the office of the Recorder of Deeds for Jackson County, Missouri, is in Blue Springs, Jackson County, Missouri, and is described as follows, to-wit: Lot numbered 8 in Block numbered 16, Town of Blue Springs, in the County of Jackson and State of Missouri. Said deed was dated March 24, 1883, and conveyed the property to William H. Jones, James N. Burris and Collins J. Dillingham as trustees for the sole and separate use of Blue Springs Cumberland Presbyterian Church, of the County of Jackson, State of Missouri, and to their successors.

The property described in said deed constituted at and before the said alleged merger and union the church property of the said Blue Springs Cumberland Presbyterian Church at Blue Springs, Missouri, and was used and occupied by the members and congregation of said Blue Springs Cumberland Church as a place of worship. Before and at the time of said alleged merger and union the said William N. Jones (one of the persons averred by this answer to be an indispensable party to this suit) was trustee and elder in said Blue Springs Cumberland Presbyterian Church, and said R. J. Lowe (one of the persons averred by this answer to be an indispensable party to this suit) was an elder in said Cumberland Church. Upon said alleged merger and union the said Jones and Lowe claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union. They are citizens of Missouri and reside at Jackson County, Missouri, and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Blue

Spring, and who now assert the validity of said alleged merger and union and who now claim to be members of the Presbyterian Church, and as such, entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri. Said church property is in the possession of defendant V. B. Robertson, who is a member and an elder of said Blue Springs Cumberland Presbyterian Church and is a representative of the class of persons who, at the time of the alleged merger and union, refused to recognize the validity of the same and then and now assert the invalidity of the same, all of whom are citizens of the State of Missouri.

The property referred to in the Bill of Complaint as described in deeds recorded in Book 18, page 503, and Book 18, page 551, in the office of the Recorder of Deeds of Chariton County, Missouri, and is described as follows, to-wit: Lots 14 and 15 in Block 39 in Salisbury, Missouri. An undivided one-half of said property was conveyed by deed dated February 28, 1878, to F. T. Dysart and others as trustees for the Cumberland Presbyterian Church of Salisbury, Missouri, said deed being recorded at Book 22, page 6, in the office of the Recorder of Deeds in said Chariton County, and the remaining undivided one-half of said property was conveyed by deed dated December 26, 1885, to Lemuel D. Brummall, W. R. Slaughter and others, as trustees of the Cumberland Presbyterian Church in Salisbury, Missouri, said deed being recorded in Book 35, at page 263, in the office of the Recorder of Deeds of Chariton County. At the time of said alleged merger and union said property was occupied and used as a place of worship by the congregation of said Cumberland Presbyterian Church at Salisbury. Before said alleged merger and union said G. W. Alker and J. F. Walker (two of the persons averred by this answer to be indispensable parties to this suit) were members and elders of the Cumberland Presbyterian Church, and that since said alleged merger and union said Alker and Walker claimed the validity of said merger and union and claimed to be and are still claiming to be members of the Presbyterian Church and elders thereof at Salisbury, Missouri. They are citizens of Missouri and reside at Salisbury and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Salisbury, and who now assert the validity of said alleged merger and union, and now claim to be members of the Presbyterian Church and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri.

That the defendant W. R. Slaughter was and still is a member and elder of said Cumberland Presbyterian Church at Salisbury, and trustee under said deed, and the said property is in the possession of said defendant W. R. Slaughter and the class of persons at Salisbury, Missouri, who, at the time of said alleged merger and union, were and now are members of the said Cumberland Presbyterian Church at Salisbury, and who dispute and deny the validity of said alleged merger and union. That the defendant W. R. Slaughter and the persons belonging to said

class of which he is a representative, are citizens of the State of Missouri.

That the property referred to in the Bill of Complaint and described as Lots 16, 17 and 18, in Block 17, in the original survey of Aurora, Missouri, was conveyed by deed dated May 18, 1878, said deed being recorded at Book V, page 51, in the office of the Recorder of Deeds of Lawrence County, Missouri, to James H. Young and others as trustees of the Cumberland Presbyterian Church at Aurora in the County of Lawrence and State of Missouri. Up to the time of said alleged merger and union said property was occupied by and used as a place of worship by the congregation of said Cumberland Presbyterian Church at Aurora. At and before said alleged merger and union, George W. Rinker (one of the persons averred by this answer to be an indispensable party to this suit) was a trustee under said deed, and a member of the Cumberland Presbyterian Church at Aurora, Missouri. At and before said alleged merger and union, J. F. Whitmire (one of the persons averred by this answer to be an indispensable party to this suit) was a member of the Cumberland Presbyterian Church at Aurora, Missouri. That said Rinker and Whitmire assert and claim the validity of said merger and union and now claim to be and are members of the Presbyterian Church, and as such members, with others who are members of said Presbyterian Church and citizens of Missouri, are now in the exclusive possession of said property at Aurora, claiming the same by virtue of said alleged merger and union, and excluding therefrom and from any use thereof the defendant N. Logan, who is a member of said Cumberland Presbyterian Church at Aurora, and the class of persons whom he represents as members of said Cumberland Presbyterian Church at Aurora, and who dispute the validity and assert the invalidity of said alleged merger and union, and all of whom are citizens of the State of Missouri. That said Rinker and Whitmire are representative of the class of persons who belonged, at the time of the alleged merger and union, to the Cumberland Presbyterian Church at Aurora and who now assert the validity of said merger and union and are members of the Presbyterian Church at Aurora and are also representing all of the members of said Presbyterian Church at Aurora, Missouri, all of whom are citizens of Missouri.

The property referred to in the Bill of Complaint as described in Book 54, at page 508, in the office of the Recorder of Deeds of Lawrence County, Missouri, is in Lawrence County, Missouri, and is described as follows: Beginning at the southwest corner of Block 28, in Williams' Addition to the town of Marionville, Missouri, and turning thence east 82 feet, thence north 102 feet, thence west 82 feet, thence south 102 feet to the place of beginning. Said deed was dated July 24, 1891, and conveyed said property to George W. Rinker and S. A. Gammill, as the board of trustees of the Cumberland Presbyterian Church at Marionville and their successors in office. At and before the time of said alleged merger and union, said property was occupied and used as a place of worship by the congregation of said Cumberland Presbyterian Church at Marionville,

Missouri. That George W. Rinker (one of the persons averred by this answer to be an indispensable party to this suit), with others who claim to be members of the Presbyterian Church at Marionville, Missouri, assert and claim the validity of said merger and union, and by virtue of said alleged merger claim the title and exclusive right of occupation, use and control of said property. The said George W. Rinker is a representative of the class of persons who belonged at the time of the alleged merger and union to the Cumberland Presbyterian Church at Marionville, and who now assert the validity of said merger and union and claim to be members of the Presbyterian Church at Marionville; all of them are citizens of the State of Missouri.

The defendant Gammill was and still is a member of said Cumberland Presbyterian Church at Marionville, Missouri. That defendant Gammill is a representative of that class of persons who at the time of and before the alleged merger and union were and are still members of the Cumberland Presbyterian Church at Marionville, Missouri, and who dispute and deny the validity of said merger and union and who are citizens of the State of Missouri.

The property referred to in the Bill of Complaint as described in the deed recorded in Book 6, at page 13, in the office of the Recorder of Deeds for Macon County, is situated in Macon County, Missouri, and is described as follows: Commencing at the southeast corner of the southeast quarter of the southwest quarter of Section 9, Township 60, Range 13, and running north far enough to contain two acres; thence west 13 rods; thence south to the line; thence east to the beginning corner.

Said deed was dated October 1, 1867, and conveyed said property to "the Cumberland Presbyterian Church worshipping at New Harmony of Macon County, in the State of Missouri."

At and for a long time before the said alleged merger and union, said property constituted the church property of the said Cumberland Presbyterian Church at New Harmony and was in the possession of and used by the members and congregation of said Cumberland Church at that place as a house of worship.

At and before said alleged merger and union, said H. L. Wilson and the said S. R. Wilgus (two of the persons averred by this answer to be indispensable parties to this suit) were members of and elders in said Cumberland Presbyterian Church. Upon said alleged merger and union, the said H. L. Wilson and said S. R. Wilgus claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union; and the said H. L. Wilson is now a member and elder, and the said S. R. Wilgus is a member of the Presbyterian Church; they are citizens of Missouri, reside at said New Harmony and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at New Harmony, and who now assert the validity of said alleged merger and union and who now claim to be members of the Presbyterian Church at New Harmony, and as such, entitled to the exclusive use, occupation and control of said

church property, and all of whom are citizens of the State of Missouri.

They and the said class of persons of whom they are so representative are now in the exclusive possession, use, occupation and control of said property and exclude therefrom and from any use, occupation and control thereof the said defendant W. H. Billings and the class of persons of whom he is representative, who deny the validity of said alleged merger and union and who, at the time thereof, were members of the said Cumberland Presbyterian Church at New Harmony, and all of whom are citizens of the State of Missouri.

The property referred to in the Bill of Complaint is described in a deed recorded in Book 45, at page 298, in the office of the Recorder of Deeds for Schuyler County, is situated in Schuyler County, Missouri, and is described as follows: Lots 5 and 6, in Block 30, in the original town of Downing, Schuyler County, Missouri, except a strip off the northwest side of Lot No. 5, thirty feet wide and the full length of said lot.

Said deed was dated July 20, 1896, and conveyed said property to the defendant A. M. Todd and James D. Bondurant and William S. Powell, trustees of the Cumberland Presbyterian Church of Downing, in the County of Schuyler, State of Missouri, and their successors.

At and for a long time before the said alleged merger and union, said property so situated in Downing, constituted the church property of said Cumberland Presbyterian Church of Downing, and was in the possession of, used by and belonged to the members and congregation of the said Cumberland Presbyterian Church in that place as and for a house of worship.

At and before said alleged merger and union, the said William S. Powell (one of the persons averred by this answer to be an indispensable party to this suit) was a member, one of the trustees and elders of said Cumberland Presbyterian Church of Downing.

Upon said alleged merger and union, the said William S. Powell claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said merger and union, and he is now a trustee and an elder in the Presbyterian Church of Downing. He is a citizen of Missouri, resides at Downing, and is representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Church at Downing, and who now assert the validity of said merger and union, and who now claim to be members of the Presbyterian Church at Downing and, as such, entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of Missouri.

The defendant A. M. Todd is still a trustee of said Cumberland Church in Downing, and he and the class of persons of whom he is representative are, as members of said Cumberland Presbyterian Church of Downing, in possession of said church property, and all of them are citizens of the State of Missouri.

The property referred to in the Bill of Complaint as de-

scribed in deed recorded in Book 134, at page 240, in the office of the Recorder of Deeds of Buchanan County, Missouri, is in St. Joseph in said Buchanan County, Missouri, and is described as follows, to-wit: A strip of ground 55 feet wide by 90 feet in length off the east end of Lots 4 and 5 in Block 17 in Carter's Addition to the City of St. Joseph, Missouri, beginning at the southeast corner of said Lot 5 and running thence west 55 feet; thence north 90 feet; thence east 55 feet; thence south 90 feet to the place of beginning.

The property referred to in the Bill of Complaint as described in and recorded in Book 134, page 240, in the office of the Recorder of Deeds of Buchanan County, Missouri, is in St. Joseph, Buchanan County, Missouri, and is described as follows: A strip of ground 10 feet wide, beginning 55 feet west of the southeast corner of Lot 5 and running thence north 100 feet; thence west 10 feet; thence south 100 feet; thence east 10 feet; also a strip of ground 10 feet wide beginning at the northeast corner of Lot 4 and running thence west 55 feet; thence south 10 feet; thence east 55 feet; thence north 10 feet to the place of beginning; and all in Block 17 in Carter's Addition to the City of St. Joseph. Said property constitutes a portion of the main church premises of the Cumberland Presbyterian Church in the City of St. Joseph, Missouri. Said property described in said deed dated August 14, 1885, was conveyed to the Board of Trustees of the Platte Presbytery of the Cumberland Presbyterian Church, a corporation duly organized and existing under the laws of the State of Missouri. At and up to the time of said alleged merger and union said property was occupied and used as a place of worship by the congregation of said Cumberland Presbyterian Church at St. Joseph, Missouri. Before said alleged merger and union Luke H. Moss (one of the persons averred by this answer to be an indispensable party to this suit) was duly elected by said congregation as a trustee in the place and as successor to certain other persons named in said deed, and that said Luke H. Moss was such trustee at the time of the alleged merger and union. That said Luke H. Moss and W. D. Boyer (one of the persons averred by this answer to be an indispensable party to this suit) assert and claim the validity of said merger and union, and claim to be and are now members of the Presbyterian Church at St. Joseph, Missouri, and are elders thereof. They as such elders and members, who with others are members of said Presbyterian Church at St. Joseph, Missouri, and citizens of Missouri, are now in the exclusive possession of all of said property at St. Joseph, claiming the same by virtue of said alleged merger and union, and excluding therefrom and from any use thereof, the defendant J. C. Bigham, who is a member of the Cumberland Presbyterian Church at St. Joseph, and the class of persons whom he represents as members of said Cumberland Presbyterian Church at St. Joseph, Missouri, and who dispute the validity and assert the invalidity of said alleged merger and union, all of whom are citizens of the State of Missouri. That said Luke H. Moss and W. D. Boyer are representative of the class of persons who belonged at the time of said alleged merger and union to the

Cumberland Presbyterian Church at St. Joseph, Missouri, and who now assert the validity of said merger and union and are members of the Presbyterian Church at St. Joseph, and are also representatives of all members of said Presbyterian Church, all of whom are citizens of the City of St. Joseph, and residents of the State of Missouri. And said defendant J. C. Bigham is a representative of that class of persons who belonged, at the time of the alleged merger and union, and who still belong to the Cumberland Presbyterian Church at St. Joseph, Missouri, and who now dispute the validity and assert the invalidity of said merger and union; all of them are citizens of the State of Missouri.

The property referred to in the Bill of Complaint as conveyed by deed recorded in Book 89, at page 227, in the office of the Recorder of Deeds for Vernon County, Missouri, and properly described in said Bill of Complaint as the east half of the north 109 feet of fractional Block No. 18 in the City of Nevada, Missouri, was conveyed, by the deed referred to, which was dated November 26, 1900, to "The Board of Trustees of Lexington Presbytery of the Cumberland Presbyterian Church, in the State of Missouri," was then and still is a corporation created and existing under the laws of said State of Missouri.

At and for a long time before the said alleged merger and union, the foregoing property situated in the City of Nevada was in the possession of, used by and belonged to the members and congregation of said Cumberland Presbyterian Church in that city, as and for a place of worship.

The defendant E. T. Steele is and was at the time of said alleged merger and union, an elder in said Cumberland Presbyterian Church, is a citizen of Missouri, and resides in said City of Nevada; the said Steele and the class of persons of whom he is representative and who were at the time of said alleged merger and union members of said Cumberland Presbyterian Church in Nevada, and who deny the validity of said alleged merger and union, are now in possession of said property and use the same as a place of worship of said Cumberland Presbyterian Church of Nevada.

At and before said alleged merger and union, the said Albert Howell (one of the persons averred by this answer to be an indispensable party to this suit) was a member of and an elder in said Cumberland Presbyterian Church at Nevada. Upon said alleged merger and union, the said Albert Howell claimed and still claims to have become a member of the Presbyterian Church, and asserts the validity of said alleged merger and union; he is now an elder in said Presbyterian Church at Nevada, and is representative of the class of persons, who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Nevada, and who now assert the validity of said alleged merger and union and claim to be members of said Presbyterian Church at Nevada, and as such entitled to the exclusive possession, use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the Bill of Complaint and described in the deed recorded in Book 126 at page 141 in the office of the Recorder of Deeds of Bates County, Missouri, is situated in said Bates County, Missouri, and is described as follows, to-wit: Commencing at a point 8 rods south and 6 rods east of the northwest corner of the northeast quarter of the southeast quarter of Section 16, Township 40, Range 29; thence east 9 rods; thence south 7 rods; thence west 9 rods; thence north 7 rods to the place of beginning, containing 63 square rods, and is the local church property of the Spruce Congregation of the Cumberland Presbyterian Church. The same was conveyed by deed dated the 27th day of February, 1894, and found of record as aforesaid in the Recorder's office of Bates County, Missouri, to William Ludwick, William M. White and R. L. Radford as trustees of said Spruce Congregation of the Cumberland Presbyterian Church of the said County of Bates and State of Missouri, and to their successors. And at the time of the alleged merger and union described in the complaint belonged to and was used by said Spruce Congregation of said Cumberland Presbyterian Church as its regular place of worship.

At the time of said alleged merger and union one James Simpson (one of the persons averred in this answer to be an indispensable party to this suit), and one Carl Ludwick (also averred by this answer to be an indispensable party to this suit), together with the defendant Lee Reese and others, were members of and officers of and constituted said Spruce Congregation.

That upon said alleged merger and union the said James Simpson and Carl Ludwick claimed and still claim to have become members of the Presbyterian Church by reason of said alleged merger and union and asserted and now assert the validity of said merger and union; and they are representative of that class of persons belonging to said congregation at the time of said alleged merger and union who with them asserted the validity of said merger and union and with them claimed and now claim by reason of the same, to have become members of the Presbyterian Church. And that they, the said James Simpson and Carl Ludwick, together with those constituting the class as aforesaid, of whom they are representative, reside in said Bates County, Missouri, and are citizens of said county and state. That they, together with the class they represent, claim, by virtue of said alleged merger and union, to have succeeded to the title to the property described in the deed and to have become entitled to the exclusive use, occupation and control of said property.

That the defendant Lee Reese is representative of that class of persons, all of whom are now citizens of the State of Missouri, who were, at the time of said alleged merger and union, residents of said Bates County, Missouri, and members of said Spruce Congregation of the Cumberland Presbyterian Church, and who, at the time of said alleged merger and union, and now, dispute the validity of the same and assert its invalidity. And that the said Lee Reese is also a citizen of the State of Missouri.

The property referred to in the Bill of Complaint and described in the deed recorded in Book W, page 251, of the office of the Recorder of Deeds of Randolph County, in the State of Missouri, is located in the city of Moberly, Randolph County, Missouri, and is described as follows, to-wit: All of Lots 1, 2 and 3, in Block 1, Young & Stevens' First Addition to the town of Moberly, as appears by the plat of said addition on file in the proper office.

That the same is the property of the Congregation of the Cumberland Presbyterian Church at said city of Moberly, in the County of Randolph, and at the time of the alleged merger and union referred to in the Bill of Complaint was used by said congregation as its local place of worship.

That the same was conveyed by deed found as aforesaid in the office of the Recorder of Deeds of Randolph County, made and executed on the 4th day of December, 1869, to O. F. Chandler, J. C. Teadford and Chesterfield Walden, as trustees for the said Cumberland Presbyterian Church Society at Moberly, said County of Randolph and State of Missouri, and to their assigns and successors as trustees.

That at the time of said alleged merger and union the defendant F. E. P. Harlan, together with William L. Haynes and John W. Ingram (two of the persons averred in this answer to be indispensable parties to this suit) had been elected trustees in place of the trustees named in the deed who were deceased. And the said F. E. P. Harlan and the said William L. Haynes and the said John W. Ingram were such trustees at the time of said alleged merger and union, and together with others constituted the congregation of the said Cumberland Presbyterian Church in said City of Moberly, County of Randolph and State of Missouri.

That upon said alleged merger and union the said William L. Haynes and the said John W. Ingram asserted the validity of said merger and union and claimed to have become members of the Presbyterian Church by reason of the same and do now claim to be members of said Presbyterian Church and are now in fact members of said Presbyterian Church and actively promoting its organization in said city of Moberly. That the said William L. Haynes and the said John W. Ingram are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church Congregation at Moberly, Missouri, and who with them asserted the validity of said union and who with them claimed by reason of said merger and union to have become members of the Presbyterian Church at Moberly, and who are now in fact members of said Presbyterian Church.

That they, the said William L. Haynes and the said John W. Ingram, together with the class of persons of whom they are representative, are citizens of the State of Missouri; residing in said City of Moberly, and are now in possession of the said property described in the deed, claiming to have title thereto as members and officers of the Presbyterian Church at Moberly, Missouri, and claiming to have the exclusive right to the use, control and management of said property as members

of said Church, and are actively excluding the defendant F. E. P. Harlan and the class of persons of whom the said F. E. P. Harlan is alleged in the bill to be a representative, from any use, occupation, management or control of said property. That the defendant F. E. P. Harlan upon said alleged merger and union refused to recognize the validity of the same, and he then and does now assert the invalidity of the same, and is representative of that class of persons who were members of said Moberly Congregation of the Cumberland Church with him at the time of said alleged merger and union who with him refused to recognize the validity of said union and who do now refuse to recognize the validity of the same and who assert the invalidity thereof, and who are still maintaining the original organization in the Cumberland Church in said City of Moberly. That the defendant F. E. P. Harlan, together with the class of persons of whom he is representative, are all citizens of the State of Missouri. That the said defendant F. E. P. Harlan is and was also an elder in said Cumberland Presbyterian Congregation.

The property referred to in the Bill of Complaint, described as Lots five (5) and six (6), Tannahill's First Addition to the City of Blairstown, Missouri, conveyed by deed dated August 2, 1892, recorded October 27, 1894, in Book 107, at page 4, in the Recorder's office of Henry County, Missouri. The grantees in said deed are W. R. Phipps, C. R. McCams and W. P. Carrington, Trustees of Cumberland Presbyterian Church of the County of Henry and State of Missouri. The said property described in said deed and the church building thereon constituted, at and before the said alleged merger and union, the church property of the said Cumberland Presbyterian Church at said Blairstown, and was used and occupied by the members of said Cumberland Presbyterian Church as a place of worship.

Defendant C. O. Wall, at and prior to the alleged merger and union, was and still is a member of the Cumberland Presbyterian Church, and with others, who were, prior to said alleged merger and union, and still are members of said Cumberland Presbyterian Church at Blairstown, Missouri, dispute and assert the invalidity of said merger and union and claim to have the title to and the exclusive right of possession, occupation and use of said church property, and all of whom are citizens of the State of Missouri.

W. R. Phipps (one of the parties averred by this answer to be an indispensable party to this suit), at and before said alleged merger and union, was a Trustee for the Cumberland Presbyterian Church at Blairstown, and B. L. Albin and L. B. McKean (two of the persons averred by this answer to be indispensable parties to this suit) were duly elected as Trustees of said Cumberland Presbyterian Church at Blairstown, Missouri, in the place of and successors to certain other Trustees of said Church; that said Phipps, Albin and McKean, as such Trustees and members of said Presbyterian Church at Blairstown, Missouri, and other members of said Presbyterian Church at Blairstown, Missouri, now assert the validity of the alleged

merger and union and by virtue thereof claim to be members of the Presbyterian Church, and they are claiming that they have and hold the title to said church property and are entitled to the exclusive use, possession and occupation of said church property, and are excluding therefrom and from any use thereof the defendant C. O. Wall and the class of persons whom he represents as members of said Cumberland Presbyterian Church at Blairstown, Missouri, and all of whom are residents and citizens of the State of Missouri.

The property referred to in the Bill of Complaint as Lot fifty-one (51), Weaver's Addition to the City of Clinton, in Henry County, Missouri, conveyed by deed recorded in the Recorder's office of said county, in Book R, at page 39; Book 5, page 215; Book 21, page 389, and Book 21, page 398. Said Lot fifty-one (51) and the church building thereon constituted, at and before the said alleged merger and union, the church property of the said Cumberland Presbyterian Church at Clinton, Missouri, and was used and occupied by the members and Congregation of said Cumberland Presbyterian Church as a place of worship.

At and before the said alleged merger and union the defendant J. M. Weidemeyer and one B. L. Owen (one of the persons averred by this answer to be an indispensable party to this suit) were trustees of and members of the said Cumberland Presbyterian Church at Clinton, Missouri, and as such held the title to said Lot fifty-one (51) for the use and benefit of the said Cumberland Presbyterian Church.

Upon said alleged merger and union the said Owen claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said alleged merger and union. He is a citizen of Missouri and resides in said Henry County, Missouri, and is representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Clinton, Missouri, and who now assert the validity of the said alleged merger and union and claim to be members of the Presbyterian Church and, as such, entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant J. M. Wiedemeyer was and still is a member and trustee of said Cumberland Presbyterian Church at Clinton, Missouri, and said church property is in the possession of the defendant Weidemeyer and of the class of persons at Clinton, Missouri, of whom he is a representative, as hereinbefore stated, and who deny the validity of said alleged merger and union and assert the invalidity thereof, and claims the right to the exclusive ownership, use and benefit of said church property, and all of whom are residents and citizens of the State of Missouri.

The property referred to in the bill of complaint as conveyed by deed recorded in Book 84 at page 17 in the office of the Recorder of Deeds of Henry County, Missouri, and described as $\frac{1}{2}$ acre, commencing at a point $208\frac{1}{3}$ feet due north of the southeast corner of Section 10, Township 41,

Range 46, thence north 208 1/3 feet, west 208 1/3 feet, south 208 1/3 feet, east 208 1/3 feet to the beginning, in Henry County, Missouri. That said property, with the church building thereon, constituted, at and before the said alleged merger and union, the church property of the Cumberland Presbyterian Church, and was known as Mount Carmel Cumberland Presbyterian Church, and was owned and used as a place of worship by the congregation of said church in the neighborhood and vicinity of said church property.

That at and before said alleged merger and union the defendant J. G. Turk and other persons were trustees of and members of said Cumberland Presbyterian Church and as such held title to said property for said Mount Carmel Cumberland Presbyterian Church.

Upon said alleged merger and union Oscar A. Mitchell and Charles Mertel (two of the persons averred by this answer to be indispensable parties to this suit) and who, before said alleged merger and union, were members of said Mount Carmel Cumberland Presbyterian Church, claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union. That after said alleged merger and union they were elected and now are trustees of said Presbyterian Church and, as such trustees and as members of said Presbyterian Church in the neighborhood and vicinity of said Mount Carmel Cumberland Presbyterian Church, with other members of the Presbyterian Church in said vicinity, of whom said Mitchell and Martel are representative, assert and claim the validity of said alleged merger and union, and by reason thereof claim the title and the right to the exclusive possession and use of said Mount Carmel Church property; and all of whom are citizens of the State of Missouri.

That defendant James G. Turk, and the other members of the Cumberland Presbyterian Church in the vicinity of said Mount Carmel Church, of whom said defendant Turk is representative, dispute and deny the validity of said alleged merger and union, and claim to have and own the title and the exclusive right of possession, occupation and use of said Mount Carmel Church and premises, and now have the possession of said Church property, and all of whom are citizens of the State of Missouri.

The property referred to in the bill of complaint described in deeds recorded in Books 96, page 341, and U page 86 and 87, in the office of the Recorder of Deeds of Johnson County, Missouri, as follows, to-wit: The property in said deed recorded in Book 96 is described thus, commencing at the southwest corner of the southwest quarter of the southwest quarter of Section 36, Township 45, Range 27, running east fourteen (14) rods, thence north twelve (12) rods, thence west fourteen (14) rods, thence south twelve (12) rods to the place of beginning, the said land being in Johnson County, Missouri. The grantees in said deed were J. M. Taylor, William Sweeney and J. L. Cleland, Trustees of the Pisgah Cumberland Presbyterian Church and their successors. And the property described in

said deed recorded in Book U is described thus, a lot or parcel of land out of the southwest quarter of the southwest quarter of Section 36, Township 45, Range 27, bounded as follows, to-wit: Beginning at the south line of said quarter quarter section at a point on said line fourteen (14) rods east of the southwest corner of said quarter quarter section, thence north twelve (12) rods, thence east thirty-four (34) rods, thence south twelve (12) rods to the said south line of said quarter quarter section, thence west on said south line thirty-four rods to the place of beginning, said land being in Johnson County, Missouri. The grantees in said last mentioned deed are Joseph Peak, John Hughes and Francis M. Oglesby, Trustees for the Cumberland Presbyterian Church, and their successors. That said two pieces of property are adjacent and adjoining and, with the building thereon, constitute the church property of the Pisgah Cumberland Presbyterian Church in said Johnson County, Missouri.

That the defendant S. A. Catlin is successor of one of the trustees named in each of the aforesaid deeds and is trustee for and a member of the Cumberland Presbyterian Church and, as such, holds title to said property for said Cumberland Presbyterian Church, and as such, with the other members of the said Pisgah Cumberland Presbyterian Church, is entitled to the possession and use of said church property.

That prior to said alleged merger and union J. L. Cleland (one of the persons averred by this answer to be an indispensable party to this suit) was a trustee, with other trustees, holding the title to said church property for the use and benefit of the said Cumberland Presbyterian Church; but that upon the said alleged merger and union the said J. L. Cleland asserted and still asserts the validity of said alleged merger and union and claimed and still claims, by virtue of said alleged merger and union, to be a member of said Presbyterian Church and a trustee holding for it the title to said church property; that the said Cleland is representative of a class of persons claiming, as he does aforesaid, that said alleged merger and union is valid and that he and other trustees and members of the said Presbyterian Church were and are entitled to the possession and use of said church property as members and officers of said Presbyterian Church, and are in the possession, control, and use of said church property; and that he and the said class he represents deny, exclude and prevent said defendant Catlin and other trustees and members of the Pisgah Cumberland Presbyterian Church, whom said Catlin represents, the possession, control and use of said church property. That the said defendant Catlin and the class he represents aforesaid, and the said Cleland and the class he represents aforesaid and all citizens and residents of the State of Missouri.

The property referred to in the amendment to the bill of complaint, described in deed recorded in Book 107 at page 246, is situated at Albany in Gentry County, Missouri, and is described as follows: "Beginning at the northeast corner of Block Number Four (4) of Robert Canady's Addition to Athens

(now Albany), from thence running west One Hundred and Thirty-two (132) feet, thence south Forty-six and one-half ($46\frac{1}{2}$) feet, thence east One Hundred and Thirty-two (132) feet, thence north Forty-six and one-half ($46\frac{1}{2}$) feet to the place of beginning." Said property is conveyed by a deed dated June 23, 1900, to Charles O. Patton, John T. Brooks and John Newman, Trustees of the Cumberland Presbyterian Church at Albany and their successors in office. Said property and the church building thereon constitutes the main church property which, at and prior to the alleged merger and union, belonged to and was in the possession of the congregation and members of the Cumberland Presbyterian Church at Albany as a place of worship.

That at and prior to the alleged merger and union John Newman (one of the persons averred in this answer to be an indispensable party to this suit) was a trustee and member of said Cumberland Presbyterian Church at Albany, and he now asserts and declares the validity of said alleged merger and union and claims to be and is a member of the Presbyterian Church. That said Newman asserts and declares that by virtue of said alleged merger and union he, together with other members of the Presbyterian Church U. S. A. at Albany, Missouri, have the title to and are entitled to the exclusive possession, occupation and use of said property, and are excluding or attempting to exclude therefrom and from the use and possession thereof defendant Albert W. Green, who, with other members of the Cumberland Presbyterian Church, and of whom he is representative at Albany, Missouri, dispute and deny the validity of said alleged merger and union and claim to own and be entitled to the exclusive possession, use and occupation of said church property. The said John Newman, and the other members of the Presbyterian Church at Albany, whom he represents; together with the said defendant Albert W. Green, and the members of the Cumberland Presbyterian Church at Albany, whom said Green represents, are all citizens of the State of Missouri.

The property referred to in the amendment to the bill of complaint, conveyed by deed recorded in Book 110 at page 308 in the office of the Recorder of Deeds of Gentry County, Missouri, is situated in Gentry County, Missouri, and is described as follows: "Beginning fourteen (14) rods west of the northeast corner of the northwest quarter of the southwest quarter of Section 27, Township 64, of Range 30, thence west Eight (8) rods, thence south Twenty-two (22) rods, thence east Eight (8) rods, thence north Twenty-two (22) rods to the place of beginning. That said property was conveyed by deed dated August 6th, 1901, to the Trustees of the Liberty congregation of the Cumberland Presbyterian Church of Platte Presbytery of the County of Gentry and their successors. That said property conveyed by said deed was conveyed for the exclusive purpose and use as a cemetery and public burying ground. That at and before the said alleged merger and union said property was in the exclusive possession, use and occupation of the members of the Liberty Cumberland Presbyterian Church

and that John McCammon (one of the persons averred by this answer to be an indispensable party to this suit) was at and prior to the said alleged merger and union a member of said Liberty Cumberland Presbyterian Church; but that since said alleged merger and union said McCammon claims to be and is a member of the Presbyterian Church; and that said McCammon, together with other members who belong to the Presbyterian Church in the vicinity of said property, by virtue of said alleged merger and union, claim to own and be entitled to the exclusive possession, use and occupation of said premises, and are excluding therefrom and from the beneficial use thereof defendant Albert W. Green and the members of the Cumberland Presbyterian Church in the vicinity of said property, who dispute and deny the validity of said alleged merger and union, and who claim to have the title and to be entitled to the exclusive possession and beneficial use of said premises.

That said McCammon, and the class of persons whom he represents, and the said Albert W. Green, and the class of persons he represents, are all citizens of the State of Missouri.

The property referred to in the amendment to the bill of complaint as described in deed recorded in Book 117 at pages 136 and 137 in the office of the Recorder of Deeds of Gentry County, Missouri, is situate in Gentry County and is described as follows: "All of Lot Three (3) in Block Four (4) of Canady's Addition to the city (formerly town) of Albany." That said property was conveyed by deed dated October 3, 1899, to John T. Brooks, John Newman and Charles O. Patton, Trustees of the Albany congregation of the Cumberland Presbyterian Church and their successors in office. The said property, with the building thereon, prior to said alleged merger and union belonged to the members of the congregation of said Cumberland Presbyterian Church at Albany, and constituted the place of worship of said congregation.

That at and prior to said alleged merger and union John Newman (one of the persons averred by this answer to be an indispensable party to this suit) was trustee of the Cumberland Presbyterian Church; but he, since said alleged merger and union, claims to be and is, together with other persons who were members of said Cumberland Presbyterian Church, and of whom said Newman is representative, claim to be and are members of the Presbyterian Church and assert and declare, by virtue of said alleged merger and union, that he and they own and are entitled to the exclusive possession, use and occupation of said property, and are excluding therefrom and from the possession and use thereof said defendant Albert W. Green and others, members of the Cumberland Presbyterian Church at Albany, Missouri, of whom said Albert W. Green is representative, who dispute the validity and assert the invalidity of said alleged merger and union, and claim to have and own the title and to have the exclusive right of possession, use and occupation of said premises.

That said Newman and the class he represents and said

Green and the class he represents are all citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 57, at page 337, in the office of the Recorder of Deeds for Randolph County, Missouri, is situated in said Randolph County and described as follows:

All of one acre of ground enclosed by lines beginning and running as follows: Commencing 15 feet south of the northeast corner of the northwest quarter of the northeast quarter of Section 2, Township 54, Range 14, and running south 70 yards; thence west 70 yards; thence north 70 yards; thence east 70 yards to the place of beginning.

Said deed was dated October 30, 1897, and conveyed said property to the Trustees of the Cumberland Presbyterian Church at Cairo, Missouri, to-wit: M. J. Wallace, Levi Steely, H. K. Cunningham, J. C. Ridings, J. G. Patrick and G. W. Baker, and their successors in office, to be used by them for a church house and church grounds for the Cumberland Presbyterian Church at Cairo, Missouri.

At and for a long time before said alleged merger and union, said property constituted the church property of said Cumberland Presbyterian Church at Cairo, and belonged to, was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church at Cairo as and for a house of worship.

At and before said alleged merger and union, said A. B. Fleeger and J. W. Burton (two of the persons averred by this answer to be indispensable parties to this suit) were members of and elders in said Cumberland Presbyterian Church at Cairo. Upon said alleged merger and union the said Fleeger and Burton claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union, and both of them are now members of and elders in the Presbyterian Church at said Cairo; they are citizens of the State of Missouri, reside at said Cairo and are representative of the class of persons who, at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church at Cairo, and who now assert the validity of said alleged merger and union, and claim to be members of the Presbyterian Church at Cairo, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

They and the said class of persons of whom they are so representative are now in the exclusive possession, occupation and control of said property and exclude therefrom and from any use, occupation and control thereof the said defendant C. Elmer Turner, who was at and before said alleged merger and union and still is a trustee and elder of said Cumberland Presbyterian Church at Cairo, and the class of persons of whom he is representative, and who deny the validity of said alleged merger and union, and who, at the time thereof were, and still are, members of the Cumberland Presbyterian Church at Cairo, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book P, at page 349, in the office of said Recorder of Deeds for Randolph County, Missouri, is situated in said Randolph County and described as follows: A part of the southwest quarter of the northwest quarter of Section twenty-six (26), Township fifty-five (55), Range fourteen (14), beginning at the northeast corner of the southwest quarter of the northwest quarter of said Section 26 and running south with the line to the channel of the first ravine to its junction with another ravine running from the northeast; thence following up the channel of this ravine in a northeast direction to the place of beginning, except one acre in the northeast corner.

Said deed was dated May 17, 1864, and conveyed said property to C. H. Baker, Joseph A. Hannah and S. R. King, Trustees of Grand Prairie Congregation of the Cumberland Presbyterian Church.

At and for a long time before said alleged merger and union, said property constituted the church property of said Grand Prairie Congregation of the Cumberland Presbyterian Church, about three miles north of Cairo, in said Randolph County, and belonged to, was in the possession of and used by the members and congregation of the Cumberland Presbyterian Church at that point as a house of worship.

At and before said alleged merger and union said W. A. Landrum and G. W. Shaw (two of the persons averred by this answer to be indispensable parties to this suit) were members of said Grand Prairie Congregation of the Cumberland Presbyterian Church, the said Landrum being a trustee and the said Shaw an elder thereof. Upon said alleged merger and union the said Landrum and Shaw claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union, and the said Shaw is now an elder in said Presbyterian Church; they are citizens of Missouri, and reside in said Randolph County in the locality of said church property and are representative of the class of persons who, at the time of said alleged merger and union, belonged to the said Grand Prairie Congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church in that locality, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant E. S. Morrison was, at the time of said alleged merger and union, and still is, a member, trustee and elder of said Grand Prairie Congregation of the Cumberland Presbyterian Church, and he and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Grand Prairie Congregation of said Cumberland Presbyterian Church, and who are now, as such, in the possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in the deed recorded in Book 39, at page 226, in the office of said Recorder of Deeds for Randolph County, Missouri, is situated in said Randolph County and is described as follows: Lot No. 184, in the original Town of Huntsville, Missouri, except 11 feet off the northeast side of said lot.

The deed was dated May 16, 1890, and conveyed said property to F. M. Hammett, J. W. Hammett, J. M. Kirkpatrick and B. W. Malone, Trustees of the Huntsville Cumberland Presbyterian Church and their successors.

At and for a long time before said alleged merger and union, said property constituted the church property of the Cumberland Presbyterian Church at Huntsville, and belonged to and was in possession of and used by the members and the congregation of said Cumberland Presbyterian Church at Huntsville as a house of worship.

At and before said alleged merger and union said F. M. Hammett and W. S. Thomas (two of the persons averred by this answer to be indispensable parties to this suit) were members of said Cumberland Presbyterian Church at Huntsville; said F. M. Hammett being an elder and trustee thereof, and said W. S. Thomas being an elder thereof. Upon said alleged merger and union the said Hammett and Thomas claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union, and said Hammett is now a trustee and elder in said Presbyterian Church and said Thomas is an elder of the same; they are both citizens of Missouri, reside at Huntsville and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Huntsville and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at Huntsville, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

They and the class of persons of whom they are representative, as aforesaid, are now in the exclusive possession, occupation and control of said church property and exclude therefrom and from any use, occupation and control thereof the said defendant James C. Jenkins, who was at the time of said alleged merger and union and still is a member of said Cumberland Presbyterian Church at said Huntsville, and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who, at the time thereof were and still are members of said Cumberland Presbyterian Church, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 6, at page 174, in the office of said Recorder of Deeds for said Randolph County, is situated in said Randolph County and is described as follows: Commencing at the northeast corner of the northwest quarter of the northeast quarter of Section 29, Township

54, Range 14, running west 276 feet; thence south 120 feet; thence east 276 feet; thence north to the beginning, 120 feet.

Said deed was dated October 13, 1874, and conveyed said property to J. J. Adams, A. T. Chapman and J. C. Jenkins, Trustees of Mount Hope Congregation of the Cumberland Presbyterian Church.

At and for a long time before said alleged merger and union, said property constituted the church property of said Mount Hope Congregation of the Cumberland Presbyterian Church and belonged to and was in the possession of and used by the members and congregation of said Cumberland Church at that locality as a house of worship.

At and before said alleged merger and union, said Thomas Shiflett and John Frazier (two of the persons averred by this answer to be indispensable parties to this suit) were members and elders of said Mount Hope Congregation of the Cumberland Presbyterian Church. Upon said alleged union and merger said Shiflett and Frazier claimed and still claim to have become members of the Presbyterian Church and assert the validity of said alleged merger and union; they are now both elders in said Presbyterian Church; they are citizens of the State of Missouri and reside in said Randolph County, in the locality of said church property, and are representative of the class of persons who at the time of said alleged merger and union belonged to said Mount Hope Congregation of the Cumberland Presbyterian Church, who assert now the validity of said alleged merger and union and who now claim to be members of the Presbyterian Church in that locality, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant John W. Walker was, at the time of said alleged merger and union, and still is a member and elder of said Mount Hope Congregation of the Cumberland Presbyterian Church, and he and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who, at the time thereof, were and still are members of said Mount Hope Congregation of said Cumberland Church, are now, as such, in the exclusive possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 11 at page 58 in the office of the Recorder of Deeds for said Randolph County, and is described as follows: Two acres near the southeast corner of the east half of the northeast quarter of Section 17, Township 53, Range 15.

Said deed was dated August 15, 1859, and conveyed said property to James H. Bagby, J. J. Kirkpatrick and D. W. Malone, Trustees of the Sweet Springs Cumberland Presbyterian Church.

The property referred to in the amendment to the Bill of Complaint as described in Book 11 at page 59 in the office of

the Recorder of Deeds for said Randolph County, is situate in said Randolph County and is described as follows:

One acre in the northeast corner of the east half of the southeast quarter of Section 17, Township 53, Range 15.

Said deed was dated April 27, 1877, and conveyed said property to said James H. Bagby, J. J. Kirkpatrick and D. W. Malone, as Trustees of Sweet Springs Cumberland Presbyterian Church.

At and for a long time before said alleged merger and union, said two parcels of real estate together constituted the church property of said Sweet Springs Cumberland Church, and belonged to, was in the possession of and used by the members and congregation of the Cumberland Presbyterian Church at that place, as a house of worship.

At and before said alleged merger and union, the said J. J. Kirkpatrick (one of the persons averred by this answer to be an indispensable party to this suit), being one of the trustees to whom said property was conveyed as aforesaid, was a member of said Cumberland Presbyterian Church. Upon said alleged merger and union the said Kirkpatrick claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said merger and union; he is now a member of the Presbyterian Church, is a citizen of the State of Missouri, and resides in Saline County, in said State of Missouri. He is representative of the class of persons who at the time of said alleged merger and union, belonged to said Sweet Springs Congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church, and, as such, entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant Heber C. Johnston is representative of the class of persons who deny the validity of said alleged merger and union, and who at the time thereof were and are now members of the Sweet Springs Congregation of the Cumberland Presbyterian Church, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 98, at page 379, in the office of the Recorder of Deeds for Macon County, Missouri, is situated in said Macon County and is described as follows: Lots 15 and 16, in Block 13, in the town of Callao. Said deed was dated March 20, 1894, and conveyed said property to W. M. Stacy, William Pillers and J. P. English, Trustees of the Cumberland Presbyterian Church at Callao, and their successors.

At and for a long time before said alleged merger and union, said property so situated in Callao, constituted the church property of the Cumberland Church in Callao, and was in the possession of, used by and belonged to the members and congregation of said Cumberland Church in that place as and for a house of worship.

At and before said alleged merger and union the said Wil-

liam Pillers and Henry Kelso (two of the persons averred by this answer to be indispensable parties to this suit) were members of the said Cumberland Presbyterian Church at Callao, the said Pillers being a trustee and elder and the said Kelso being also an elder in said church.

The defendant J. A. Chinn was and still is an elder in said Cumberland Presbyterian Church in Callao.

Upon said alleged merger and union the said William Pillers and Henry Kelso claim, and still claim, to have become members of the Presbyterian Church, and assert the validity of said merger and union, and the said Pillers is now a trustee and elder in said Presbyterian Church at Callao, and the said Henry Kelso is now an elder in said Presbyterian Church, and both of them are citizens of the State of Missouri, reside at said Callao and are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Church at Callao, and who now assert the validity of said merger and union, claiming to be members of the Presbyterian Church at Callao, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri. Said church property is now in possession of said William Pillers and Henry Kelso and the class of persons of whom, as before stated, they are representative, and who entirely exclude from the use, occupation and control thereof the defendant Chinn and the class of persons of whom he is representative, and who were at the time of said alleged merger and union, and still are, members of said Cumberland Presbyterian Church at Callao, who deny the validity of said alleged merger and union, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 14, at page 318, in the office of the Recorder of Deeds for Macon County, Missouri, is situated in said Macon County, and is described as follows: One acre of land in the form of a square lying and being in and to be taken out of the southeast corner of the southeast quarter of the northeast quarter of Section 28, Township 58, Range 14. Said deed was dated February 2, 1871, and conveyed said property to Richard Whitehead, William T. Jones, R. S. Goodridge, William Whitehead and John Quinn, as trustees of the Liberty Congregation of the Cumberland Presbyterian Church.

At and for a long time before said alleged merger and union, said property constituted the church property of said Liberty Congregation of the Cumberland Presbyterian Church, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Church as a house of worship.

At and before said alleged merger and union said A. L. Epperson and A. L. Whitehead (two of the persons averred by this answer to be indispensable parties to this suit) were members and elders of said Cumberland Presbyterian Church. Upon said alleged merger and union the said A. L. Epperson and A. L. Whitehead claimed and still claim to have become members

of the Presbyterian Church and assert the validity of said alleged merger and union, and they are now both of them members and elders of said Presbyterian Church; they are citizens of Missouri and reside in Macon County, in said State, and are representative of the class of persons who at the time of said alleged merger and union belonged to said Liberty Congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and now claim to be members of said Presbyterian Church in said locality and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri; and they and the said class of persons of whom they are so representative are now in the exclusive possession, occupation and control of said property, and exclude therefrom and from any use, occupation and control thereof the said defendant T. W. Craven and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, who at the time of said alleged merger and union, were and still are members of the Liberty Congregation of the Cumberland Presbyterian Church, and all of whom are citizens of the State of Missouri.

Said defendant T. W. Craven was before said alleged merger and union and still is a member and elder of said Liberty Congregation of said Cumberland Presbyterian Church.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 32, at page 310, in the office of the Recorder of Deeds for Scotland County, Missouri, is situated in said Scotland County, and is described as follows: Lots 1 and 2, in Block 2, Walters' Addition to the Town of Octavia.

Said deed was dated September, 1889, and conveyed said property to W. W. Hayden, J. H. Trent and John Hucke, Trustees of the Round Grove Cumberland Presbyterian Church, and their successors.

At and for a long time before said alleged merger and union, said property constituted the church property of the Round Grove Cumberland Presbyterian Church in said Scotland County and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church at that point as a house of worship.

At and before said alleged merger and union said Louis Koppee (one of the persons averred in this answer to be an indispensable party to this suit) was a member of and an elder in said Round Grove Cumberland Church, and upon said alleged merger and union said Louis Koppee claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said alleged merger and union; he is now a member of and an elder in said Presbyterian Church at that place, is a citizen of Missouri, resides in said Scotland County and is representative of the class of persons who at the time of said alleged merger and union belonged to said Round Grove Cumberland Presbyterian Church, and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at that place, and as such entitled to

the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The said defendant John T. Trent was at the time of said alleged merger and union, and is now, a member, elder and trustee of said Round Grove Presbyterian Church, and he and the class of persons of whom he is representative, and who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Round Grove Cumberland Presbyterian Church, are now in the possession, use, occupation and control of said church property, and all of them are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 2, at page 338, in the office of the Recorder of Deeds for Cooper County, Missouri, is situate in said Cooper County and described as follows: Beginning at a stone at the southeast corner of the southwest quarter of the southwest quarter of Section 17, Township 47, Range 16; thence east 5 chains, 13 links to a stone on the west side of road leading from Jefferson City to Boonville; thence north 34 degrees west with said road 20 chains and 11 links to a stone; thence south 16 chains to a stone and thence east 5 chains and 27 links to the place of beginning.

Said deed was dated October 6, 1851, and conveyed said property to Robert Johnson, James Johnson, Samuel Chambers and Eli Adams, Trustees of the New Salem Cumberland Presbyterian Church and congregation and their successors forever.

At and for a long time before said alleged merger and union, said property constituted the church property of the New Salem Cumberland Presbyterian Church, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church at that place as a house of worship.

At and before said alleged merger and union the said W. F. Johnson and N. A. Galbraith (two of the persons averred by this answer to be indispensable parties to this suit) were members and elders of said New Salem Cumberland Presbyterian Church. Upon said alleged merger and union the said Johnson and Galbraith claimed and still claim to have become members of the Presbyterian Church and assert the validity of said merger and union; both of them are now members of said Presbyterian Church and elders thereof, at said place; they are citizens of Missouri, reside in said Cooper County, and are representative of the class of persons who at the time of said alleged merger and union belonged to said New Salem Cumberland Presbyterian Church, and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at that place, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant F. N. Adair was at the time of said alleged merger and union, and still is, a member of said New Salem Cumberland Presbyterian Church, and the defendant L. F. Clemens was at the time, and still is, the pastor of said New Salem Cumberland Presbyterian Church; and the said defend

ants Adair and Clemens and the class of persons of whom they are representative, who deny the validity of said alleged merger and union, and who at the time thereof were, and still are, members of said New Salem Cumberland Presbyterian Church, are, as such, now in the exclusive possession, use, occupation and control of said church property, and all of them are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint and alleged to be described in the deed recorded at Book 42, page 332, in the office of the Recorder of Deeds for Saline County, Missouri, is situated in said Saline County, Missouri, and is the property of the Mt. Olive Congregation of the Cumberland Presbyterian Church.

The same is held not only under the deed referred to in the amendment to the Bill of Complaint at Book 42, page 332, of said Recorder of Deeds office, but is also held by and under deed found at Book 14, page 458, of the Recorder's office of Saline County, Missouri. The property involved is described as follows: A strip of land off of the north end of the west half of the southwest quarter of Section 3, in Township 49 north, of Range 21 west, running through the entire length of said subdivision, containing 9 acres and 82/100 of an acre, except a strip of ground 50 feet in width along and off the east, west and south sides of said land to be kept open as a public highway.

A one-half interest in and to said property was conveyed by the said deed found as aforesaid at Book 14, page 458, of the Recorder's office of Saline County, Missouri, to William Burke, Bolivar Doyle and W. K. Mahard, acting elders of the said Cumberland Presbyterian Church at Mt. Olive, in said Saline County, Missouri, on the 4th day of November, 1869, and unto said elders and their successors in office forever.

And that subsequently, on the 17th day of September, 1885, the title passed by said deed to the said Mt. Olive Congregation of the Cumberland Presbyterian Church as aforesaid was further confirmed by deed of conveyance found at Book 42, at page 332, of said Recorder's office of Saline County, Missouri, by which an undivided one-half interest in said property was quit-claimed to James Martin, William Burke and William K. Mahard, as trustees of said Cumberland Presbyterian Church at Mt. Olive, Saline County, Missouri.

That at the time of said alleged merger and union the said William Burke and Bolivar Doyle mentioned in said deed at Book 14, page 458, aforesaid had died, and the said W. K. Mahard had removed from the vicinity of said Mt. Olive Congregation and no longer had any interest therein. That at such time the said James Martin and William Burke mentioned in the deed found at Book 42 as aforesaid were dead, and the said William K. Mahard has, as aforesaid, removed from said congregation.

That at the time of said alleged merger and union the defendant A. E. Larue, with others, had been elected and were elders and trustees for said Mt. Olive Congregation and are successors to the said William Burke, Bolivar Doyle, James Martin and W. K. Mahard.

That at the time of said alleged merger and union the said John Buck (one of the persons averred by this answer to be indispensable parties to this suit) was also a member and an elder in said Mt. Olive Congregation, and the defendant A. E. Larue and the said John Buck and others comprised and constituted said congregation and using the property described in the deeds as a regular place of worship for their said congregation.

That upon said alleged merger and union the said John Buck asserted the validity of the same, and by reason thereof claimed to become a member of the Presbyterian Church and now claims to be a member of the Presbyterian Church and is a representative of all that class of persons who, at the time of said alleged merger and union belonged to said Mt. Olive Congregation of the Cumberland Presbyterian Church and asserted with him the validity of said merger and union and claimed by reason thereof to become members of the Presbyterian Church and who now claim to be members of the Presbyterian Church, and who now by reason of said merger and union claim the title to said property in them as members of the Presbyterian Church, and who as such also claim the exclusive use, occupation, management and control of said property; all of whom, together with the said John Buck, reside in the neighborhood of said Mt. Olive Church, and are citizens of the State of Missouri.

That at the time of said alleged merger and union the defendant A. E. Larue denied the validity of said alleged merger and union and asserted the invalidity of the same, and is representative of all that class of persons who, at the time of said alleged merger and union, were members and officers of said Mt. Olive Congregation, and who dispute the validity of said merger and union, and who assert the invalidity of the same, and who are now maintaining the original organization known as the Mt. Olive Congregation of the Cumberland Presbyterian Church, and who are now in possession of and claim the title to and the use, occupation, management and control of the property described in the deeds as members and officers of said congregation, and that all the same, together with the said A. E. Larue, are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint and described in the deed found at Deed Book No. 16, at pages 409-10 of the Recorder's office for Saline County, Missouri, is situate in Saline County, Missouri, and is the property of the Mt. Horeb Congregation of the Cumberland Presbyterian Church, and is described as follows, to-wit: Beginning at the section corner between Sections 8 and 9, 16 and 17, of Township 51, of Range 20; thence west variations 7 degrees and 30 minutes along the section line 8 and 64/100 chains to a stone; thence west 5 chains to a stone; thence south 2 and 72 1/2 one-hundredths chains to a stone; thence east 5 chains to a stone, containing 1 and 36/100 acres. That the same was conveyed by deed on the 15th day of June, 1859, to W. L. Ish, D. H. Cooper and C. A. Claycomb as trustees of the Cumberland Presbyterian Church, said deed being found of record in said office as stated in Deed Book No. 16, at pages 409-10, Re

recorder's office of Saline County, Missouri, and at the time of said alleged merger and union the same was held by and being used by the said Mt. Horeb Congregation of the Cumberland Presbyterian Church as its regular local place of worship.

That at the time said alleged merger and union the said W. L. Ish, D. H. Cooper and C. A. Claycomb, trustees mentioned in the deed, were deceased; and that at such time William S. Hyland (one of the persons averred by this answer to be an indispensable party to this suit), had with others become their successor as trustee, and at such time was also a member and an elder in said congregation.

That upon said alleged merger and union, said William S. Hyland asserted the validity of the same and claimed by virtue thereof to have become a member of the Presbyterian Church, and now claims to be a member and an officer in the Presbyterian Church, and that he is a representative of all that class of persons who, at the time of said alleged merger and union were members of said Mt. Horeb Congregation of the Cumberland Presbyterian Church and who asserted the validity of the same and who claimed to become members of the Presbyterian Church and who claim now to be members and officers of the same at Mt. Horeb, Missouri, and who now claim the title to said property described in the deed, and who claim the right to the exclusive use, possession, management and control of said property as members and officers of the said Presbyterian Church, and who are excluding the defendant, L. F. Clemens and those whom he represents, from any use, occupation, management or control of the same.

That at the time of said alleged merger and union said defendant L. F. Clemens denied the validity of the same and did then and now assert the invalidity of the same, and represents all that class of persons who, at the time of the same, were members and officers of said Mt. Horeb Congregation of the Cumberland Presbyterian Church who refuse to recognize the validity thereof, and assert the invalidity thereof, and who still claim the title to said property and the right to the use, occupation, management and control thereof as members of the original congregation of Mt. Horeb Congregation of the Cumberland Presbyterian Church. That all of said persons, both the said William S. Hyland and the class that he represents and the defendant, L. F. Clemens, and the class represented by him are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint, as described in the deed found in Book 68, page 602, in the office of the Recorder of Deeds for Jackson County, Missouri, is the property described as follows, to-wit: Two (2) acres in a square out of the southeast corner of the southeast quarter of the southeast quarter of Section 8, Township 48, Range 31, of said Jackson County, Missouri.

That prior to the said alleged merger and union the defendant John R. Kerr and one, Henry Dark (one of the persons averred by this answer to be an indispensable party to this suit), were trustees of and members of the Cumberland Presbyterian Church and held the title to the said church property as

trustees for said Cumberland Presbyterian Church, said property being located in the vicinity of what is known as Jones' School House.

That upon the said alleged merger and union the said Henry Dark and others, who were members of said Cumberland Presbyterian Church, asserted the validity of said alleged merger and union and claimed that they thereby became members of the Presbyterian Church and that said church property became the property of the said Presbyterian Church organization in the vicinity of said property. That the said Henry Dark and the other persons, who so asserted the validity of said alleged merger and union, took possession of and have ever since held the possession of and claim the title and the right to the possession and use of said church property for the organization of the said Presbyterian Church. That they have excluded from and deny the right of the defendant Kerr and other members of said Cumberland Presbyterian Church, who deny the validity of said alleged merger and union to the title, control, use and possession of said church property.

That the said Henry Dark is representative of a class of persons who claim to be members of the Presbyterian Church and who claim the validity of said alleged merger and union; and the defendant John R. Kerr, who is still a trustee of said property for the said Cumberland Presbyterian Church, is representative of a class of members of the said Cumberland Presbyterian Church who deny the validity of said alleged merger and union and who claim title and the right to the possession and use of said church property for the purpose of a place of worship by the officers and members of the said Cumberland Presbyterian Church. That the said Dark and all of the members of the class he represents, aforesaid, and the said Kerr and all of the members of the class he represents, aforesaid, were at the time of the institution of this suit and still are residents of the State of Missouri and citizens thereof.

The property referred to in the amendment to the Bill of Complaint and described as one square acre in the northeast corner of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of Section 8, Township 44, Range 27, Johnson County, Missouri which was and is known as the New Liberty Church. That said property at and prior to the alleged merger and union was held, used and occupied by the members of the congregation constituting said New Liberty Cumberland Presbyterian Church as a place of worship.

That the defendant Hubert Elliott and others were members and are members of said New Liberty Cumberland Presbyterian Church, and as such hold the title to said property for said church.

That upon and after the said alleged merger and union one J. T. Hughes (one of the persons averred by this answer to be an indispensable party to this suit), and who was prior to said alleged merger and union a member of said New Liberty Cumberland Presbyterian Church, asserted and still asserts the validity of said alleged merger and union and claims that there by he, and the class of persons whom he represents, viz.: th

members of the Presbyterian Church in the vicinity of the New Liberty Church, became and are the owners of and entitled to the exclusive use and control of the said New Liberty Church property, and are in possession of said property and have ever since and now exclude and prevent the defendant Elliott, and the class of persons whom he represents, viz.: the members of the said Cumberland Presbyterian Church, who dispute and deny the validity of said alleged merger and union, from any use or occupation of said church property.

That the said Elliott and all of the members of the class he represents, aforesaid, and the said Hughes and all of the members of the class he represents, aforesaid, were at the time of the institution of this suit and are now residents and citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint, as described in deeds recorded in Book C, at page 431, and Book 34, at page 237, in the office of the Recorder of Deeds of Johnson County, Missouri, was conveyed by said deeds to R. M. Crockett and others as trustees for the Cumberland Presbyterian Church at Columbus, in Johnson County, Missouri, and known as Blackwater Cumberland Presbyterian Church and was used as a place of worship by the members of said Cumberland Presbyterian Church at said place prior to the alleged merger and union.

That after the said alleged merger and union the said Crockett (one of the persons averred by this answer to be an indispensable party to this suit), and the successors to the other trustees to said property, except the defendant, Frank Ramsey, asserted the validity of said alleged merger and union, and claimed that thereby they were trustees for and members of the said Presbyterian Church and that also, by virtue thereof, the said property became and is the property of the congregation of the said Presbyterian Church at said Columbus. That upon the said alleged merger and union they and other members of the Presbyterian Church entered into the possession of said property and have ever since and now claim to and do hold possession and control thereof and exclude and prevent the said defendant Ramsey and other members of the said Cumberland Presbyterian Church at Columbus, who dispute and deny the validity of said alleged merger and union and claim that the same was illegal and void, from occupying, controlling or entering upon said property for the purpose of worshiping in the same as members of said Cumberland Presbyterian Church.

That said Crockett is representative of a class of persons belonging to said Presbyterian Church, who reside at Columbus and in that vicinity, who assert and claim the validity of said alleged merger and union and who claim the title to and the right to the possession and control of said church property. That the defendant Ramsey represents a class of persons belonging to said Cumberland Presbyterian Church, who reside at Columbus and in that vicinity, who deny the validity of said alleged merger and union and claim to be entitled to the possession and control of said property and the title to same as members of the Cumberland Presbyterian Church at said

Columbus. That said Crockett and the said Ramsey and all of the members of both of said classes which they represent, as aforesaid, are residents and citizens of the State of Missouri, and were such at the time of the institution of this suit.

The property referred to in the amendment to the Bill of Complaint, described in deeds recorded in Book 5, page 336, and in Book 79, page 483, in the office of the Recorder of Deeds of said Johnson County, Missouri, with the buildings thereon, prior to said alleged merger and union, constituted and was the property of the Cumberland Presbyterian Church at Knobnoster in said Johnson County, and is yet the property of said Cumberland Church.

That the defendant, Alexander Phoenix, an elder in said Cumberland Presbyterian Church, and other members of said Cumberland Presbyterian Church, constituting a class of which said Phoenix is representative in Knobnoster, are still in the possession and control of said church property.

That prior to the said alleged merger and union one Bruce Shepherd (one of the persons averred by this answer to be an indispensable party to this suit), was a member of the said Cumberland Presbyterian Church at Knobnoster; and that upon the alleged merger and union the said Shepherd, and others of the class which he represents, asserted and claimed and still assert and claim the validity of said alleged merger and union, and claim the right to the title, possession and control of said church property, and deny the right of the said defendant Phoenix and the class he represents to the use and occupation thereof. That the defendant Phoenix and the class he represents deny the validity of said alleged merger and union and claim that the same is invalid and void and that they, representing the Cumberland Presbyterian Church at Knobnoster, are entitled to the exclusive use and control and ownership of said property.

That the said Bruce Shepherd and all of the members of the class he represents, as aforesaid, and the said defendant Ramsey, and all of the members of the class which he represents, as aforesaid, were at the time of the institution of this suit and are now residents and citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in the deed recorded in Book 24, at page 492, in the office of the Recorder of Deeds of Johnson County, Missouri, is known as the Mount Zion Church property in said Johnson County, Missouri.

That prior to the alleged merger and union J. H. Woodford and J. B. Wiley (two of the persons averred by this answer to be indispensable parties to this suit) were members of said Mount Zion Cumberland Presbyterian Church and elders thereof; that upon the said alleged merger and union they asserted the validity thereof and claimed that thereby they became and were members of the Presbyterian Church, and that the said Mount Zion church organization had become a Presbyterian Church Organization. That others, who were members of said Cumberland Presbyterian Church prior to the said alleged

merger and union, also joined the said Woodford and Wiley; that said Woodford and Wiley in said claim are representatives of said class of persons. That the said Woodford and Wiley upon the said alleged merger and union asserted and claimed and still assert and claim that they and the class they represent as aforesaid, became the owners of and entitled to the use, possession and control of said church property, and denied and still deny the right of the defendant James E. Eberts, who was prior to the said alleged merger and union a member of the said Cumberland Presbyterian Church and an elder thereof, and who represents a class of members of said Cumberland Presbyterian Church who dispute and deny the validity of said alleged merger and union, to the said property or the possession, use or control thereof.

That the defendant Eberts and the class he represents, being members of the Cumberland Presbyterian Church as aforesaid, have since the alleged merger and union kept and held and still keep and hold the possession and control and the use of said church property as a place of worship of the said Cumberland Presbyterian Church organization at said Mount Zion Church.

That the said Woodford and Wiley and all of the members of the class whom they represent and the said Eberts and all of the members of the class whom he represents were at the time of the institution of this suit and still are citizens and residents of the State of Missouri.

The property referred to in amendment to the Bill of Complaint and alleged to be described in Deed Book 158, at page 381, of the Recorder's office of Henry County, Missouri, is situated in the town of Blairstown, Henry County, Missouri, and is the property of the congregation of the Cumberland Presbyterian Church of Blairstown, Missouri, and is described as follows, to-wit:

Lots 3 and 4, in Block 2, in Tannehill's First Addition to the original town of Blairstown, Missouri, and at the time of the alleged merger and union referred to in the Bill of Complaint was used by the said congregation as a manse or parsonage.

That the same was conveyed by deed found as aforesaid in the office of the Recorder of Deeds of Henry County, Missouri, at Book 158, page 381, of date August 14, 1903, to D. L. Albin, L. B. McKean and W. R. Phipps, trustees of the Cumberland Presbyterian Church at Blairstown, Missouri, in said County of Henry and State of Missouri, and to their successors.

That at the time of said alleged merger and union the said D. L. Albin, L. B. McKean and W. R. Phipps (being three of the persons averred by this answer to be indispensable parties to this suit), together with the defendants C. O. Wall, S. E. Atkins and others, constituted and comprised the said Blairstown congregation of the Cumberland Presbyterian Church. That upon said alleged merger and union the said D. L. Albin, L. B. McKean and W. R. Phipps as members of said congregation and also as trustees and elders thereof, asserted the validity of said merger and union and claimed to have become

members of the Presbyterian Church and yet claim to be members of said church and are representative of all that class of persons who as members and officers of said Blairstown congregation of the Cumberland Presbyterian Church at the time of said alleged merger and union and who asserted the validity of the same, and who, by reason thereof, claimed to have become members of the Presbyterian Church and who now claim to be members of the Presbyterian Church, and who now, as members and officers of such church, claim to have the title to the property described in the deed and assert and claim the exclusive right to use, occupation, control and management of said property, and who exclude therefrom and from any use, control or management thereof, the defendants C. O. Wall and S. E. Atkins, and all that class of persons whom they are alleged in the Bill of Complaint to represent, being all the members and officers of said Blairstown congregation of the Cumberland Presbyterian Church at the time of said alleged merger and union who refused to recognize the validity of the same, and who asserted the invalidity of the same, and who claim yet to be members of the original organization of said Cumberland Presbyterian Church.

That the said D. L. Albin, L. B. McKean and W. R. Phipps and the class of persons of whom they are representative are now members of the Presbyterian Church and actively engaged in promoting its organization at said town of Blairstown, and that they and all those whom they represent, together with the defendants C. O. Wall, S. E. Atkins and the class whom they represent are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint and alleged to be described in deed recorded in Deed Book 12, at page 768, in the County of Dade, in the State of Missouri, is located in the town of Greenfield in said County of Dade and State of Missouri, and is described as follows, to-wit:

All of the west half of fractional Block No. 41, in said town of Greenfield, containing 34/100 of one acre or less. That the same is the property of the congregation of the Cumberland Presbyterian Church in the town of Greenfield, County of Dade, and State of Missouri, and at the time of the alleged merger and union referred to in the amendment to the Bill of Complaint and for a long time prior thereto belonged to said congregation and was used by said congregation as its local house of worship.

That the same was conveyed by deed found as aforesaid in the office of the Recorder of Deeds of Dade County, Missouri, made and executed on the 25th day of June, one thousand eight hundred and sixty-eight, to William J. Garrett, John H. Howard, Samuel B. Bowles, Enoch Wasson and Jonathan Weir as trustees, for the use and benefit of the said Cumberland Presbyterian Church at Greenfield, said county and state, and to their successors in office.

That at the time of said alleged merger and union T. E. Whaley and P. D. Stringfield (two of the persons averred by this answer to be indispensable parties to this suit), together

with the defendants William H. Scott and James E. Shaw and others constituted and comprised the said Congregation of the Cumberland Presbyterian Church at Greenfield and were members and officers thereof.

That upon said alleged merger and union the said T. E. Whaley and P. D. Stringfield asserted the validity of said alleged merger and union and claimed to have become members of the Presbyterian Church by reason of the same, and do now claim to be members of said Presbyterian Church, and are now in fact members of said Presbyterian Church and actively promoting its organization.

That the said T. E. Whaley and P. D. Stringfield are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church Congregation at Greenfield, Missouri, and who, with them, asserted the validity of said union, and who, with them, claimed by reason of said alleged merger and union to have become members of the Presbyterian Church at Greenfield, and who are now in fact the members of said Presbyterian Church and actively promoting its organization. That they, the said T. E. Whaley and P. D. Stringfield, together with the class of persons of whom they as aforesaid are representatives, are citizens of the State of Missouri, residing in said city of Greenfield, and are now claiming to have title to the property described in the deed as members of the Presbyterian Church at Greenfield, and are asserting and claiming to have the exclusive right to the use, control and management of said property as members and officers of said church, and are claiming the right to exclude the defendant William E. Scott and the defendant James E. Shaw and the class of persons of whom they, the said William E. Scott and James W. Shaw, are representative, from any use, occupation, management or control of said property, and from any right to the title thereto. That the defendants William E. Scott and James E. Shaw are representatives of that class of persons who, at the time of the alleged merger and union, were members of said Cumberland Congregation at Greenfield, Missouri, and who, at the time of said alleged merger and union and do now dispute the validity of said alleged merger and union and assert the invalidity thereof, and who are now members of the original Cumberland congregation at said point.

That the said T. E. Whaley and P. D. Stringfield, together with all persons constituting said class of which they are representative, are citizens of the State of Missouri.

That the defendants William E. Scott and James E. Shaw, together with all persons constituting the class of which they are representative, are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint alleged to be described in deed recorded in Book 69, page 414, in the County of Dade and the State of Missouri, is located in the town of Greenfield, in said County of Dade and State of Missouri, and is described as follows, to-wit: Lot 4, in Block 5, in Union Addition to the town of Greenfield, said County of Dade, State of Missouri; the same being immediately

north of and adjoining a lot of ground the same size now owned by one John A. Thurmond, and the consideration of which conveyance was paid by the Cumberland Presbyterian Church of Greenfield, Missouri. That the same is the property of said Cumberland Presbyterian Church in the said town of Greenfield, county and state aforesaid, and at the time of the alleged merger and union referred to in the amendment to the Bill of Complaint, and for a long time prior thereto, belonged to said congregation and was used by said congregation as its manse or parsonage. That the same was conveyed by deed found as aforesaid in the office of the Recorder of Deeds of said Dade County, Missouri, made and executed on the 13th day of November, 1894, to John H. Howard, Temple E. Bell, Jonathan Weir, William J. Garrett and Enoch P. Wasson, as trustees for the said congregation of the Cumberland Presbyterian Church at Greenfield, Dade County, aforesaid, and unto their successors and assigns.

That at the time of said alleged merger and union T. E. Whaley, Temple E. Bell and P. D. Stringfield (three of the persons averred by this answer to be indispensable parties to this suit), together with the defendants William E. Scott, James E. Shaw and others, constituted and comprised the said congregation of the Cumberland Presbyterian Church at Greenfield and were members and officers thereof. That the said T. E. Whaley and the said Temple E. Bell, with others, were trustees under said deed.

That upon said alleged merger and union the said T. E. Whaley, Temple E. Bell and P. D. Stringfield asserted the validity of said alleged merger and union and claimed to have become members of the Presbyterian Church by reason of the same, and do now claim to be members of said Presbyterian Church and are now in fact members of said Presbyterian Church and actively promoting its organization. That they, the said T. E. Whaley, Temple E. Bell and P. D. Stringfield, are representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church congregation at Greenfield, Missouri, and who, with them, asserted the validity of said alleged merger and union, and who, with them, claimed by reason of said alleged merger and union to have become members of the Presbyterian Church at Greenfield, and who are now in fact members of said Presbyterian Church and actively promoting its organization. That they, the said T. E. Whaley, Temple E. Bell and P. D. Stringfield, together with the class of persons of whom they, as aforesaid, are representative, claimed to have acquired the property described in the deed, as members, trustees and officers of the Presbyterian Church at Greenfield by reason of said alleged merger and union, and claim to have the exclusive right to the use, control and management of said property as members and officers of said church, and claim the right to exclude the defendants William E. Scott and James E. Shaw and the class of persons of whom they, the said William E. Scott and James E. Shaw, are representative, from any use, occupation, management or control of said property, and from

any right to the title thereto. And that the said Temple E. Bell and the said T. E. Whaley, together with others of the class of which they are representative, did undertake to sell and convey by their deed, the property last above described and referred to, to one J. P. McReynolds, and deliver possession of the same to the said J. P. McReynolds, and the said J. P. McReynolds is now in possession of the same under their said deed, claiming to be the owner of the same, and excluding the defendants William E. Scott and James E. Shaw, together with all persons constituting the class of which the said William E. Scott and James E. Shaw are representative, from any use, occupation, control or management thereof.

That the said J. P. McReynolds is averred by this answer to be an indispensable party to this suit.

That the said T. E. Whaley, the said Temple E. Bell, and the said P. D. Stringfield, together with all those constituting the class of whom they are hereinbefore alleged to be representative, together with the said J. P. McReynolds, are all citizens of the State of Missouri and reside in and near the said town of Greenfield.

That the defendants William E. Scott and James E. Shaw represent all that class of persons living in and near Greenfield, Missouri, who at the time of the alleged merger and union were members of the said local congregation of the Cumberland Presbyterian Church at said town of Greenfield, and who upon said alleged merger and union, deny the validity of the same, and who are now maintaining the original organization of the Cumberland Presbyterian Church at said place, and who are now claiming to be owners and entitled to the use, occupation, control and management of said property, and that they, and each of them, together with the class of persons of whom they are representative, are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 94, at page 311, in the office of the Recorder of Deeds for Lawrence County, Missouri, is situated in said Lawrence County and is described as follows: Lots 6 and 7, Block 2, Beckmeier's Second Addition to the city of Stotts City, Missouri.

The deed was dated March 1, 1904, and conveyed said property to Thomas B. Turk, G. B. Moore and W. F. Downey, as elders and the legal representatives of the Stotts City Congregation of the Cumberland Presbyterian Church of Stotts City and their successors.

At and for a long time before said alleged merger and union, said property constituted the church property of said Cumberland Presbyterian Church at Stotts City and belonged to and was in the possession of and used by the members and congregation of the said Cumberland Presbyterian Church at that place and as and for a house of worship.

At and before said alleged merger and union said W. H. Smith (one of the persons averred by this answer to be an in-

dispensable party to this suit) was a member and elder of said Cumberland Presbyterian Church.

Upon said alleged merger and union the said W. H. Smith claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said alleged merger and union, and said Smith is now a member of the Presbyterian Church and is an elder in said church at Stotts City; he is a citizen of Missouri, resides in said Lawrence County, and is representative of the class of persons who, at the time of said alleged merger and union, belonged to said Cumberland Presbyterian Church at Stotts City, and who now asserts the validity of said alleged merger and union, and claim to be members of the Presbyterian Church at Stotts City, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant John Neally was at and before said alleged merger and union, and still is, a member and elder of said Cumberland Presbyterian Church at said Stotts City, and with the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Cumberland Presbyterian Church at said Stotts City, and as such are in the possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 46, at page 468, in the office of the Recorder of Deeds for said Lawrence County, is situated in said Lawrence County and is described as follows: All that part of Lot 2 in the northwest quarter of Section 4, Township 29, Range 28, which is bounded and described as follows: Commencing at a point 20 feet east of a point 20 feet north of the southwest corner of said Lot 2, running thence north 30 rods, thence east 16 rods, thence south 30 rods; thence west 16 rods to the place of beginning.

Said deed was dated November 15, 1888, and conveyed said property to the elders of the Salem congregation of the Cumberland Presbyterian Church, in said County of Lawrence.

At and for a long time before said alleged merger and union said property constituted the church property of said Salem congregation of said Cumberland Presbyterian Church and belonged to and was in the possession of and used by the members and congregation of said Salem congregation of the Cumberland Presbyterian Church, as a house of worship.

The defendant, Lee McLemore, at and before said alleged merger and union, was and still is a member and elder of said Salem congregation of the Cumberland Presbyterian Church and is representative of that class of persons who were at the time of said alleged merger and union and still are members of said Cumberland Presbyterian Church, who deny the validity of said alleged merger and union, and claim to be entitled to the use, occupation and control of said church property.

G. W. Rinker (one of the persons averred by this answer to be an indispensable party to this suit), is a citizen

of the State of Missouri, resides in said Lawrence County, and was at and before said alleged merger and union, a member of said Cumberland Presbyterian Church; upon the said alleged merger and union said Rinker claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said merger and union; he is a member of said Presbyterian Church and representative of the class of persons who at and before said alleged merger and union, belonged to said Salem congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union, claim to be members of the Presbyterian Church and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book J, at page 476, in the office of the Recorder of Deeds for said Lawrence County, is situated in said Lawrence County and is described as follows: Beginning 40 chains and 73 links south and 71 degrees west of the northeast corner of Section 21, Township 27, Range 26, at a limestone 20x10x6 inches; thence west 4 chains to a sandstone 18x10x7 inches; thence north 5 chains to a sandstone 14x9x5 inches; thence east 4 chains to a sandstone 12x8x7 inches; thence south 5 chains to the beginning corner.

Said deed was dated July 28, 1869, and conveyed said property to the Board of Directors of Spring River Congregation of the Cumberland Presbyterian Church in said Lawrence County and to their successors, to hold in charge for said congregation.

At and for a long time before said alleged merger and union, said property constituted the church property of said Spring River congregation of said Cumberland Presbyterian Church and belonged to and was in possession of and used by the members of said Spring River congregation of said Cumberland Church, as a house of worship.

At and before said alleged merger and union, said J. W. McDonald and E. S. Allen (two of the persons averred by this answer to be indispensable parties to this suit), were members and elders of said Spring River congregation of the Cumberland Presbyterian Church, and upon said alleged merger and union said McDonald and Allen claimed and still claim to have become members of the Presbyterian Church, and they assert the validity of said merger and union; both of them are now members and elders of said Presbyterian Church; they are citizens of the State of Missouri, reside in said Lawrence County and are representative of the class of persons who at the time of said alleged merger and union belonged to said Spring River congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church, and as such entitled to the exclusive use, occupation and control of said church property and all of whom are citizens of the State of Missouri.

The defendant A. A. Young was at and before the time

of said alleged merger and union and still is a member and trustee of the Spring River congregation of the Cumberland Presbyterian Church, and he and the class of persons of whom he is representative, who deny the validity of said alleged merger and union and who, at the time thereof, were and still are members of said Spring River congregation of the Cumberland Presbyterian Church and as such are in the possession, use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 110, at page 423, in the office of the Recorder of Deeds for said Lawrence County, is situate in said Lawrence County and is described as follows: Lots 56, 57 and 58, in the town of Lyons, Block 5, Section 12, Township 28, Range 29.

Said deed was dated April 1, 1909, and conveyed said property to A. A. Young, R. W. Williams, J. W. Sutton, J. R. White and Leander McLemore, trustees by and for the Ozark Presbytery of the Cumberland Presbyterian Church, in trust for the exclusive use of the Bowers Mill congregation of the Cumberland Presbyterian Church, holding the doctrine of the Cumberland Presbyterian Church. And by said deed it was provided that in the event said congregation should cease to exist or hold the doctrines and faith of the Cumberland Presbyterian Church as set out in the Confession of Faith adopted by said church in 1883, the said trustees, with the Ozark Presbytery, should carefully control said property as in their judgment would most fully promote and maintain the said doctrine of said Confession of Faith; and it was further provided that said deed was never to be construed as giving any right, title or control of said property to the Presbyterian Church in the United States of America, and that their ministers should not be permitted to maintain preaching services in said house except in the case of funerals.

Said property constitutes the church property of said Bowers Mill congregation of the Cumberland Presbyterian Church.

At and before the alleged merger and union, J. E. Patton (one of the persons averred by this answer to be an indispensable party to this suit), was a member and elder of said Bowers Mill congregation of the Cumberland Presbyterian Church, and upon said alleged merger and union said Patton claimed and still claims to have become a member of the Presbyterian Church, and asserts the validity of said alleged merger and union; he is now a member and elder of said Presbyterian Church, is a citizen of the State of Missouri, resides in said Lawrence County, and is representative of the class of persons who at the time of said alleged merger and union belonged to the Bowers Mill congregation of the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church, and as such entitled to the exclusive use, occupation and control of said church

property and all of whom are citizens of the State of Missouri.

The defendant, Ephriam Woodrow, was at and before said alleged merger and union and still is a member and elder of said Bowers Mill congregation of the Cumberland Presbyterian Church, and he and the class of persons of whom he is representative, who deny the validity of said alleged merger and union and who at the time thereof were and still are members of said Bowers Mill congregation of the Cumberland Presbyterian Church, and are, as such, in the exclusive possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 49, at page 229, in the office of the Recorder of Deeds for said Lawrence County, Missouri, is situate in said Lawrence County, and is described as follows: Commencing at the center of Section 17, Township 29, Range 28; thence west 20 feet; thence north 25 rods, 10 feet, 6 inches for starting point; thence north 20 rods; thence west 16 rods; thence south 20 rods; thence east 16 rods, to the place of beginning.

The deed was dated June 10, 1889, and conveyed said property to the Assembly Board of the Cumberland Presbyterian Church for the worship of God of the people of Red Oak and vicinity and contracted by the Session of Red Oak congregation of the Cumberland Presbyterian Church.

At and for a long time before said alleged merger and union, said property constituted the church property of said Red Oak congregation of the Cumberland Presbyterian Church at Red Oak in said Lawrence County, and belonged to and was in the possession of and used by the members of said Red Oak Congregation of said Cumberland Presbyterian Church at that place as a house of worship.

At and before said alleged merger and union said H. Upp (one of the persons averred by this answer to be an indispensable party to this suit), was a member of said Cumberland Presbyterian Church at Red Oak, and upon said alleged merger and union he claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said alleged merger and union, and is now a member and elder of said Presbyterian Church, is a citizen of Missouri, resides in said Lawrence County and is representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church and who now asserts the validity of said alleged merger and union, and claim to be members of the Presbyterian Church and as such entitled to the exclusive use, occupation and control of said church property and all of whom are citizens of the State of Missouri.

The defendant, J. W. Manning, was at the time of said alleged merger and union, and still is a member and elder of said Cumberland Presbyterian Church at Red Oak, and he and the class of persons of whom he is representative,

who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Cumberland Presbyterian Church at Red Oak, are, as such, in the possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the bill of complaint as described in a deed recorded in Book 67 at page 515, in the office of the Recorder of Deeds for said Lawrence County, is situated in said Lawrence County and is in fact described in a deed recorded in Book 70 at page 372 in said office (the number of the book and page given in the said amendment to the bill of complaint being here assumed to be an error), as follows:

One acre in the northeast corner of the northeast quarter of the northeast quarter of Section 29, Township 27, Range 28, commencing at a point 15 feet west of a point 15 feet south of the northeast corner of said Section 29; thence south 16 rods; thence west 10 rods; thence north 16 rods; thence east 10 rods to the place of beginning.

Said deed was dated December 10, 1897, and conveyed said property to D. B. Phillips, W. B. Means and J. B. Shelton, Trustees of Bethel Congregation of the Cumberland Presbyterian Church, in the County of Lawrence, and their successors.

At and for a long time before said alleged merger and union, said property constituted the church property of said Bethel Congregation of the Cumberland Presbyterian Church, and belonged to and was in the possession and use of the members of said Bethel Congregation of the Cumberland Presbyterian Church, as a house of worship.

At and before said alleged merger and union, said E. William Hunley (one of the persons averred by this answer to be an indispensable party to this suit), was a member of said Bethel Congregation of the Cumberland Presbyterian Church, and upon said alleged merger and union claimed and still claims to have become a member of the Presbyterian Church, and assert the validity of said alleged merger and union, and is now a member of said Presbyterian Church. He is a citizen of the State of Missouri, and resides in said Lawrence County, and is representative of the class of persons who at the time of said alleged merger and union belonged to said Bethel Congregation of said Cumberland Presbyterian Church, and who now assert the validity of said alleged merger and union, and claim to be members of the Presbyterian Church in that locality, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant, M. M. Hunnell, was at the time of said alleged merger and union, and still is a member and elder of said Bethel Congregation of the Cumberland Presbyterian Church, and he and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who at the time thereof were and still are mem-

bers of said Bethel Congregation of the Cumberland Presbyterian Church and as such are in possession, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 40, at page 50, in the office of the Recorder of Deeds for said Lawrence County, is situated in said Lawrence County and described as follows: Lot No. 8, in Block No. 11, in Railroad Addition to the town of Verona.

Said deed was dated April 8, 1885, and conveyed said property to John F. Marbut, Thomas E. Whaley, A. N. Calhoun, Wm. F. Collins and R. C. Lewis, as elders of the Cumberland Presbyterian Church at Verona.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 40, at page 481 (487) is situated in said Lawrence County and is described as follows: All of Lot No. 7, in Block 11, First Railroad Addition to the town of Verona.

This deed was dated December 22, 1887, and conveyed said property to Jno. F. Marbut, R. C. Lewis, A. N. Calhoun, Frank Collins, elders of the Cumberland Presbyterian Church at Verona, and their successors in office.

At and for a long time before said alleged merger and union, said properties so situated in the town of Verona, constituted the church property of the Cumberland Presbyterian Church in Verona, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church in that place as and for a house of worship.

At and before said alleged merger and union, the said A. N. Calhoun (one of the persons averred by this answer to be an indispensable party to this suit) was a member and elder of said Cumberland Presbyterian Church at said Verona, and, as has been stated, was and is one of the trustees in said deeds referred to in said amendment to the Bill of Complaint.

Upon said alleged merger and union said Calhoun claimed and still claims to have become a member of the Presbyterian Church, and asserts the validity of said alleged merger and union, and is now a member and elder of said Presbyterian Church at Verona; he is a citizen of the State of Missouri, and resides in Verona in said Lawrence County, and is representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church at Verona, and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at said Verona, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the State of Missouri.

The defendant Erastus W. Hillhouse was before said alleged merger and union, and still is, a member and elder of said Cumberland Presbyterian Church at Verona, and is representative of the class of persons who deny the validity of said alleged merger and union and who at the time thereof were and

still are members of said Cumberland Presbyterian Church at Verona, and all of whom are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 133, at page 633, in the office of the Recorder of Deeds for Greene County, Missouri, is situated in said Green County and is described as follows: Lot 1, in Block 2, Acuff's Addition to the town of Walnut Grove, Missouri. The deed was dated May 30, 1894, and conveyed said property to the Cumberland Presbyterian Church at Walnut Grove, Missouri.

At and for a long time before said alleged merger and union, said property so situated in said Walnut Grove, constituted the church property of said Cumberland Presbyterian Church in Walnut Grove, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church in that place as and for a house of worship.

At and before said alleged merger and union the said D. L. Bradshaw, Buch Baber and David Creighton (three of the persons averred by this answer to be indispensable parties to this suit) were members and elders of said Cumberland Presbyterian Church. Upon said alleged merger and union said Bradshaw, Baber and Creighton claimed and still claim to have become members of the Presbyterian Church, and assert the validity of said merger and union, and they are now elders in the Presbyterian Church at said Walnut Grove; they are citizens of the state of Missouri, and reside at Walnut Grove; they are representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church at Walnut Grove and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at Walnut Grove, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the state of Missouri, and they and the said class of persons of whom they are now representative are now in the exclusive possession, occupation and control of said property, and exclude therefrom and from any use, occupation and control thereof the said defendant S. M. Fryar, who was, before said alleged merger and union, and still is a member and elder of said Cumberland Presbyterian Church at Walnut Grove, and the class of persons of whom he is representative, who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Cumberland Presbyterian Church at Walnut Grove, and all of said persons are citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book U, at page 592, in the office of the Recorder of Deeds for Polk County, Missouri, is situated in said Polk county and described as follows: Part of the west half of the southeast quarter of section 8, township 31, range 24, beginning at the northeast corner of the above described 80 acres; thence running south 20 poles to a rock; thence running west 20 poles to a rock; thence

running north 20 poles to a rock, and thence running east 20 poles to the beginning corner.

The deed was dated September 2, 1878, and conveyed said property to William Denby, William M. Hayter and James S. Lawrence, Trustees, in trust for the Oak Grove Congregation of the Cumberland Presbyterian Church and their successors.

At and for a long time before said alleged merger and union said property constituted the church property of said Oak Grove Cumberland Presbyterian Church, and belonged to and was in the possession of and used by the members and congregation of the Cumberland Presbyterian Church at that place, as and for a house of worship.

At and before said alleged merger and union said William M. Hayter (one of the persons averred by this answer to be an indispensable party to this suit) was, as has been stated, one of the trustees in the deed conveying said property, and was a member and elder of said Cumberland Presbyterian Church at Oak Grove; and upon said alleged merger and union the said Hayter claimed and still claims to have become a member of the Presbyterian Church, and asserts the validity of said alleged merger and union; he is now an elder in the Presbyterian Church at said place, is a citizen of the state of Missouri, and resides in said Polk county; he is representative of the class of persons who at and before the said alleged merger and union belonged to said Oak Grove Cumberland Presbyterian Church, and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church, and as such entitled to the exclusive use, occupation and control of said church property; and all of them are citizens of the state of Missouri.

The said defendant Caleb Andrews was at and before said alleged merger and union, and still is, a member and elder in said Oak Grove Cumberland Presbyterian Church, and is representative of the class of persons who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Oak Grove Cumberland Presbyterian Church, and all of whom are citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 4, at pages 133 and 134, in the office of said Recorder of Deeds for Polk County, is situated in said Polk county and is described as follows: Two acres out of the northwest corner of the northeast quarter of the northeast quarter of section 8, township 34, range 24.

Said deed was dated July 18, 1881, and conveyed said property to the Trustees of the Spring Creek Cumberland Presbyterian Church.

The property described in the amendment to the Bill of Complaint as described in the deed recorded in Book 47, at page 259, in the office of said Recorder of Deeds, is the same as that described in the deed just mentioned and was a deed of correction, and conveyed said property to the Trustees of Spring Creek Cumberland Presbyterian Church and their suc-

cessors in office. Said deed was dated October 17, 1893.

At and for a long time before said alleged merger and union said property constituted the church property of said Spring Creek Cumberland Presbyterian Church at that locality, and belonged to and was in the possession of and used by the members and congregation of said Spring Creek Cumberland Presbyterian Church as and for a house of worship.

At and before said alleged merger and union S. S. Crawford (one of the persons averred by this answer to be an indispensable party to this suit) was a member and elder of said Spring Creek Cumberland Presbyterian Church, and upon said alleged merger and union the said S. S. Crawford claimed and still claims to have become a member of the Presbyterian Church and asserts the validity of said alleged merger and union; he is now an elder in said Presbyterian Church at that place, is a citizen of Missouri, residing in said Polk county, and is representative of the class of persons who at the time of said alleged merger and union belonged to said Spring Creek Cumberland Presbyterian Church, and who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church at that place, and as such entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the state of Missouri.

The defendant A. Harrison Devin was at and before the time of said alleged merger and union, and still is, a member and elder in said Spring Creek Cumberland Presbyterian Church, and is representative of the class of persons who deny the validity of said alleged merger and union, and who at the time thereof were and still are members of said Spring Creek Cumberland Presbyterian Church, and all of whom are citizens of the state of Missouri.

That the property referred to in the amendment to the Bill of Complaint as found in Book R, at page 316, in the office of the Recorder of Deeds of Howell County, Missouri, is described as follows: All of a certain lot of land beginning at the northwest corner of block No. 2 in the town of Willow Springs on Center and Third streets; running easterly on Third street 63 feet; thence southwardly 55 feet; thence westwardly 63 feet to Center street; thence along Center street 55 feet to the place of beginning, all in Howell county, Missouri.

That on the 5th day of August, 1884, the title to said property was by proper deed duly conveyed to the Trustees of the Cumberland Presbyterian Church and their successors.

That the defendant Jesse Wm. Kennedy was at the time of the institution of this suit, and is now, a trustee and member of said Cumberland Presbyterian Church, and as such representative of other officers and members of said Cumberland Presbyterian Church who deny the validity of said alleged merger and union and assert that said Kennedy and the class of persons whom he represents as members and officers of said Cumberland Presbyterian Church are entitled to hold the title to and the possession of and have the exclusive use of the said church property.

That Louis Redding (one of the persons averred by this

answer to be an indispensable party to this suit) claims to be a member and is a representative of the class of persons who claim to be members of the Presbyterian Church, all of whom assert and claim the validity of said alleged merger and union and claim that thereby they are entitled to the title and exclusive possession and use of the said church property.

That the said Louis Redding and the class of persons of which he is a representative were at the time of the institution of this suit, and are yet, in the exclusive possession and are using said church property, and exclude therefrom the defendant Jesse William Kennedy and the class of persons of which he is a representative from the possession and use thereof.

That the said Redding and the class of persons of whom he is a representative as aforesaid, and the said Kennedy and the class of persons of whom he is a representative as aforesaid, at the time of the institution of this suit were, and yet are, residents and citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as found in Book 41, at page 95, in the office of the Recorder of Deeds for Howell County, Missouri, is described as follows: Commencing 807 51/100 links south and 30 feet west of monument No. 5 and junction of the center lines of South Main street and the south lines of the Public Square, West Plains, Missouri, and running thence west 163 55/100 links; thence south 65 feet; thence east 163 55/100 links; thence north 65 feet to the place of beginning, and being a part of the northeast quarter of the northwest quarter of section 28, in township 24 north, range 8 west, in Howell county, Missouri.

That on the 9th day of September, 1890, the title to said property was by proper deed conveyed to the First Cumberland Presbyterian Church incorporated in the city of West Plains, county of Howell, in the state of Missouri.

That the defendants James Martin and William L. Foley were at the time of the institution of this suit, and now are, members of said Cumberland Church at West Plains, Missouri. That said James Martin and William L. Foley, together with other members of said church of which they are representative, hold the title, possession and have the exclusive use of the said church property and the buildings thereon and are using the same as a place of worship for said organization of said First Cumberland Presbyterian Church of West Plains, Missouri. That they and the class of persons whom they represent deny the validity of said alleged merger and union.

That C. S. Hill and N. S. Thompson (two of the persons averred by this answer to be indispensable parties to this suit) were, prior to and at the time of said alleged merger and union, members of said Cumberland Presbyterian Congregation, and since said alleged merger and union assert the validity thereof, and are representative of that class of persons who at the time of said alleged merger and union were members of said Cumberland Presbyterian Congregation, and who, with them, are claiming to be members of said Presbyterian Church

in West Plains, Missouri, who assert and claim the validity of said alleged merger and union, and who claim that by virtue thereof they, as such alleged trustees and members thereof, and other members of said Presbyterian Church of which they are representative, are entitled to the title, possession and exclusive use of the said church property in said city of West Plains, Missouri.

That said C. S. Hill and N. S. Thompson and the persons whom they represent claim that by virtue of said alleged merger and union that the defendants James Martin and William L. Foley and the persons whom they represent are wrongfully in possession of said church property, and are not entitled to the use and occupation thereof.

That the said C. S. Hill and N. S. Thompson and the class of persons whom they represent and the said James Martin and William L. Foley and the class of persons whom they represent were at the time of the institution of this suit, and now are, all residents and citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint and alleged to be described in deed found in Book 71, at page 92, in the office of the Recorder of Deeds for Butler County in the State of Missouri, is located in the town of Fisk in said county of Butler and state of Missouri, and is the property of the congregation of the Cumberland Presbyterian Church at said town of Fisk, and is described as follows: Beginning at a point 60 feet west of the southwest corner of block 7, town of Fisk; thence north on the west line of Dale street 150 feet; thence west 75 feet; thence south 150 feet; thence east 75 feet to the place of beginning, being a part of lot 5, section 28, township 25, range 8 east.

That said property was, at the time of the alleged merger and union, and for a long time prior thereto, the property of the said congregation of the Cumberland Presbyterian Church at Fisk in said county of Butler and state of Missouri, and was used and occupied by said congregation as its local place of worship.

That at the time of said alleged merger and union A. J. Williams and ——— Foster (two of the persons averred by this answer to be indispensable parties to this suit), together with the defendants F. M. Rose and Charles Rose and others, constituted and comprised said Fisk congregation of the Cumberland Presbyterian Church.

That upon said alleged merger and union the said A. J. Williams and the said ——— Foster asserted the validity of the same, and by reason thereof claimed to become members of the Presbyterian Church, and do now, by reason of said alleged merger and union, claim to be members of the Presbyterian Church and are now actively engaged in promoting its organization, and by virtue of said alleged merger and union claim to be the owners of the property described and to be entitled to the exclusive use, management, possession and control of said property, and are actively excluding the defendants F. M. Rose and Charles Rose and the class of persons of whom they are representative from any use, occupation, management

or control of said property. That the said A. J. Williams and the said _____ Foster reside at Fisk in the county of Butler and are citizens of the state of Missouri. That they are representative of all that class of persons who, at the time of said alleged merger and union, were members of said congregation of the Presbyterian Church at Fisk, Missouri, and who thereupon and who do now assert the validity of the same to have become members of the Presbyterian Church, and who are now claiming said property as members of said Presbyterian Church and who are now claiming the exclusive use, occupation, management and control of said property, and who are now excluding the defendants F. M. Rose and Charles Rose, and the class of persons of whom they are representative, from any use, occupation, management or control of said property, and that all of said class are likewise citizens of the state of Missouri.

That the defendants F. M. Rose and Charles Rose are representative of all that class of persons residing at and near Fisk in said county of Butler and state of Missouri, who at the time of said alleged merger and union were members of the congregation of the Cumberland Church at said point and who refused to recognize the validity of said merger and union and who asserted the invalidity of the same, and who do now refuse to recognize the validity of the same, but assert its invalidity, and are still claiming to be members of the original Cumberland Presbyterian Church at Fisk, and that they, the said F. M. Rose and Charles Rose, together with the class of persons of whom they are representative, are citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in the deed recorded in Book 47, page 328, in the office of the Recorder of Deeds for New Madrid County, Missouri, and alleged to be claimed by defendant E. C. Haines, is situated in the town of Portageville, New Madrid county, Missouri, and is described as follows, to-wit: All of lot numbered 5 in block numbered 3 in the city of Portageville.

At and for a long time before said alleged merger and union said property so described and situated constituted the local church property of the congregation of the Cumberland Presbyterian Church at Portageville in said county of New Madrid and belonged to and was in the possession of and used by the members and congregation of said Cumberland Church, in that place as and for a house of worship. That the same was conveyed by deed dated February 23, 1905, to E. C. Haines, R. L. Layman and William Mills, trustees of the Cumberland Presbyterian Church of Portageville, said deed being found and recorded as aforesaid in Book 47, page 328, in the office of the Recorder of Deeds of New Madrid County, Missouri. Said deed further provided that in the event said congregation should become disorganized that the property described therein and conveyed thereby should be at the disposal of the West Prairie Presbytery of the Cumberland Presbyterian Church, a corporation.

At and before said alleged merger and union one H. D.

Maness and one C. L. Keaton (two of the persons averred by this answer to be indispensable parties to this suit) were members of the Cumberland Presbyterian Church within the bounds of West Prairie Presbytery and were members, officers and trustees of said Presbytery. Upon said alleged merger and union said Maness and Keaton asserted the validity thereof, and claimed and still claim by reason thereof to have become members of the Presbyterian Church, and claim the said West Prairie Presbytery to have become a Presbytery of said Presbyterian Church and that the congregation of said Cumberland Presbyterian Church at Portageville became a congregation of the Presbyterian Church, and that the property of said congregation described in the said deed became the property of the Presbyterian Church, and they, the said Maness and Keaton, are now members of the Presbyterian Church, and claim said property for said church. They are citizens of the state of Missouri and reside at Dexter, Missouri. They are representative of the class of persons who, at the time of said alleged merger and union, belonged to the Cumberland Presbyterian Church within the bounds of West Prairie Presbytery, and are representative of all that class of persons who belonged to and were members, officers, agents and trustees of said West Prairie Presbytery who now assert the validity of said alleged merger and union and claim to be members of the Presbyterian Church and claim said Presbytery to have been merged into a new Presbytery of the Presbyterian Church and who claim that by reason of said alleged merger and union all the property and membership of the Cumberland Presbyterian Church within the bounds of West Prairie Presbytery, including the congregation of Portageville and the property belonging to them as described in said deed passed to the Presbyterian Church, and are now claiming the same for the Presbyterian Church; and all of whom are citizens of the state of Missouri.

That the defendant E. C. Haines is a citizen of the state of Missouri, residing in the county of New Madrid, and at the time of said alleged merger and union was a member of the said Portageville congregation of the Cumberland Presbyterian Church, and is yet a member thereof, and is representative of all that class of persons who, at the time of said alleged merger and union, were members of said congregation or members of the Cumberland Presbyterian Church within the bounds of said West Prairie Presbytery, and representative of all the members, agents, officers and trustees of said West Prairie Presbytery who, upon said alleged merger and union, denied the validity of the same and asserted the invalidity thereof, and who are yet maintaining the original organization of the Cumberland Presbyterian Church at Portageville, Missouri, and who are maintaining the original organization of the West Prairie Presbytery of the Cumberland Presbyterian Church as a Presbytery of such church, and who are now in possession of the property described in the deed, as such original Cumberland Presbyterians, claiming and using the same for the purpose of such church. That all of said class are citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as the Presbyterian Church at Malden, Missouri, is located at the town of Malden, Dunklin county, Missouri, and is the property of the congregation of the Cumberland Presbyterian Church at that point. At and for a long time before said alleged merger and union said property constituted the church property of said Cumberland Presbyterian Church in said town of Malden, and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church in that place as and for a house of worship. The same is described as lots numbered six (6), seven (7) and eight (8) in block G in the city of Malden, said county of Dunklin. Said lots six (6) and seven (7) were conveyed by deed dated July 11, 1889, to J. H. Owens, J. S. Rice, G. A. Debow, L. L. Hopper and T. J. Bailey, as trustees of and for the Cumberland Presbyterian Church in the city of Malden aforesaid. That said lot eight (8) was conveyed by deed of date June 26, 1889, to the same named parties, as trustees of the Cumberland Presbyterian Church in said city of Malden and county of Dunklin.

At and before said alleged merger and union one H. D. Maness and one C. L. Keaton (two of the persons averred by this answer to be indispensable parties to this suit) were members of the Cumberland Presbyterian Church. Upon said alleged merger and union said Maness and said Keaton claimed and still claim, by virtue thereof, to have become members of the Presbyterian Church and assert the validity of said merger and union and claim that the property described in said deeds and so in the possession of the congregation of the Cumberland Presbyterian Church at Malden, Missouri, as aforesaid, became the property of the Presbyterian Church. They are citizens of the state of Missouri and reside at Dexter, Missouri. They are representative of the class of persons who, at the time of said alleged merger and union, belonged to the Cumberland Presbyterian Church and who now assert the validity of said alleged merger and union and claim, by reason thereof, to be members of the Presbyterian Church, and, as such, entitled to the exclusive use, occupation and control of said church property, and all of whom are citizens of the state of Missouri.

That at the time of said alleged merger and union the defendant J. S. Graybiel was a member of the Cumberland Presbyterian Church residing in Dunklin county, Missouri, and upon said alleged merger and union denied the validity of the same and asserted the invalidity of the same, and is representative of all that class of persons who, at the time of said alleged merger and union, were members of the Cumberland Presbyterian Church, and who denied the validity of said alleged merger and union and who asserted the invalidity thereof, and who are now maintaining the original organization of the Cumberland Presbyterian Church at Malden, Missouri, and who are now in possession of said property described in the deeds aforesaid and claim the same and use the same as such Cumberland Presbyterians. That the defendant Graybiel is a citizen of the

state of Missouri, and the class of persons of whom he is representative are also citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint as described in the deed recorded in Book 35 at page 375 in the office of the Recorder of Deeds of Dunklin County, Missouri, and alleged to be claimed by the defendant R. L. Layman, is situated in Dunklin county, Missouri, and is described as follows, to-wit: Lot three (3) in block nineteen (19) as the same appears on the plat of the town of Campbell, filed in the recorder's office of said county of Dunklin, and is the property of the Cumberland Presbyterian Church at said town of Campbell. At and for a long time prior to said alleged merger and union said property so situated in said town of Campbell constituted the church property of the said Cumberland Presbyterian Church in said town, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church at said point as and for a house of worship. That the same was conveyed by deed dated the 8th day of August, 1903, and found of record in the recorder's office of Dunklin county, Missouri, as aforesaid, to the West Prairie Presbytery of the Cumberland Presbyterian Church, a corporation, for the use of said church at said town of Campbell.

At and before said alleged merger and union one C. L. Keaton (one of the persons averred by this answer to be an indispensable party to this suit) was a member of said corporation West Prairie Presbytery, as aforesaid, and was also a trustee for said corporation and also a member of the Cumberland Presbyterian Church at Dexter, Missouri. Upon said alleged merger and union said C. L. Keaton claimed, by virtue of the same, and still claims to have become a member of the Presbyterian Church and asserts the validity of said merger and union and is now an elder of the Presbyterian Church and asserts that the West Prairie Presbytery of the Cumberland Presbyterian Church, together with the said Campbell Congregation of the Cumberland Presbyterian Church, have been merged into the Presbyterian Church, and now belong to such church.

The said C. L. Keaton is a citizen of the state of Missouri and resides at Dexter, Missouri. He is representative of the class of people who, at the time of said alleged merger and union, belonged to said West Prairie Presbytery and who were trustees and agents thereof, and the class of persons within the bounds of the West Prairie Presbytery who were members of the Cumberland Presbyterian Church, and who upon said alleged merger and union asserted the validity of the same and claim to have become members of the Presbyterian Church and, as such, entitled to the exclusive use, occupation and control of said church property. All of whom are citizens of the state of Missouri.

That the defendant R. L. Layman, at and before said alleged merger and union, was also a member of said Cumberland Presbyterian Church and a member of the West Prairie Presbytery, a corporation as aforesaid; and upon said alleged

merger and union denied the validity of the same, and asserted the invalidity thereof; and as representative of all that class of persons belonging to said Cumberland Presbyterian Church at Campbell, Missouri, and all members of the Cumberland Presbyterian Church belonging to and within the bounds of said West Prairie Presbytery, and all of the members, agents, officers and trustees of said West Prairie Presbytery who, upon said alleged merger and union, disputed the validity of the same and asserted its invalidity, and are now maintaining the original organization of said Cumberland Presbyterian Church at Campbell, Missouri, and the original organization of said West Prairie Presbytery as a Presbytery of the Cumberland Presbyterian Church, and as such are now in possession of the property described in the deed, claiming the same to belong to them, and claiming to be entitled to the exclusive use, possession and control thereof. That the defendant Layman, together with all who constitute the class of which he is a representative, are citizens of the state of Missouri.

The property referred to in the amendment to the Bill of Complaint and described in Book 8 at page 626 in the office of the Recorder of Deeds for Stoddard County, Missouri, is at Dexter, Missouri, and is described as follows: Lots 7 and 8 in block 4 in Deal & Boughton's Addition to the town of Dexter, and is conveyed by deed dated June 18, 1889, to C. L. Keaton, trustee for the Cumberland Presbyterian Church of Dexter, Missouri, and his successors in office.

That said property was, prior to and at the time of the alleged merger and union, used and occupied by the Cumberland Presbyterian Congregation at Dexter, Missouri, as a place of worship.

Prior to and at the time of said alleged merger and union said C. L. Keaton, the person named as trustee for the Cumberland Presbyterian Church of Dexter as mentioned in said deed (one of the persons averred by this answer to be an indispensable party to this suit) held the legal title as such trustee for the said Cumberland Presbyterian Church. That since said alleged merger and union said Keaton and other members of the Cumberland Presbyterian Church at said place who were formerly Cumberland Presbyterians, and of which class of persons the said Keaton is a representative, claimed to be and to become members of the Presbyterian Church, and assert and declare the validity of said alleged merger and union, and assert that by virtue of said Keaton being a trustee in said deed as aforesaid, and by virtue of said alleged merger and union, he, the said Keaton, and the class of persons whom he represents, own and hold the legal title to said premises and are entitled to the exclusive possession and beneficial use thereof, and are excluding therefrom and from the use and possession thereof, the defendant Laura Cook (wife of John M. Cook) and the persons who were members of said Cumberland Presbyterian Church prior to the said alleged merger and union, and who since said alleged merger and union, claim and assert the invalidity, and deny the validity of said merger and union and claim by virtue thereof to have and own the

legal title to said premises and are entitled to the exclusive possession and beneficial use thereof.

That said C. L. Keaton and the class of persons whom he represents, and the said defendant Laura Cook and the class of persons whom she represents, are all citizens and residents of the state of Missouri.

That the property referred to in the amendment to the Bill of Complaint as described in a deed recorded in Book 45, page 230, in the office of the Recorder of Deeds for Mississippi County, Missouri, and alleged to be claimed by defendants R. L. Layman and E. G. Stewart, is situated in the town of Anniston, Mississippi county, Missouri, and is described as follows, to-wit: Lots 1 and 2, block 6, in the town of Anniston, Mississippi county, Missouri. At and for a long time before said alleged merger and union said property was situated as aforesaid in the town of Anniston and constituted the church property of the congregation of the Cumberland Presbyterian Church at Anniston, belonged to and was in the possession of and was used by the members and congregation of said Cumberland Presbyterian Church in that place as and for a house of worship.

That the same was conveyed by deed dated the 9th day of September, 1902, to R. F. Davidson, E. G. Stewart and Joseph Cain, trustees of the C. P. Church at Anniston, Missouri. Said deed being found of record as aforesaid in the Recorder's office of Mississippi County, Missouri. Said deed also provided that in the event said congregation should become disorganized the property therein described and thereby conveyed should be at the disposal of the West Prairie Presbytery of said church.

At and before said alleged merger and union H. D. Maness and C. L. Keaton (two of the persons averred by this answer to be indispensable parties to this suit) were members of the Cumberland Presbyterian Church within the bounds of West Prairie Presbytery of said church, and were members of said West Prairie Presbytery, and the said C. L. Keaton was a trustee for said Presbytery, which at such times was an incorporated body.

Upon said alleged merger and union said Maness and said Keaton claimed, and still claim, to have become members of the Presbyterian Church, and asserted the validity of said merger and union, and they are now members of the Presbyterian Church. They are citizens of the State of Missouri, and reside at Dexter, Missouri. They are representative of the class of persons who, at the time of said alleged merger and union, belonged to said West Prairie Presbytery of the Cumberland Presbyterian Church, and were members, officers, agents and trustees thereof, and of the class of persons who belonged to the Cumberland Presbyterian Church within the bounds of said Presbytery, and who now assert the validity of said alleged merger and union, and claim by virtue thereof to be members of the Presbyterian Church, and who claim said West Prairie Presbytery to have become merged into the Presbyterian Church and to be now a Presbytery of the Presbyterian Church, and who claim that the congregation of the Cum-

berland Presbyterian Church at Anniston, Missouri, together with the property described in the deed, has, by virtue of said alleged merger and union, become a congregation of the Presbyterian Church, and who claim said property to have become the property of the Presbyterian Church, and who, as such, are now claiming title to the same, and the exclusive right to the use, occupation and control thereof, and all of whom are citizens of the State of Missouri.

That the defendants R. L. Layman and E. G. Stewart were, at the time of said alleged merger and union, members of the Cumberland Presbyterian Church, the said E. G. Stewart of the said Anniston congregation thereof, and the said R. L. Layman of the West Prairie Presbytery thereof, and are representative of all that class of persons who, at the time of said alleged merger and union, were members of said Cumberland Presbyterian Church within the bounds of said West Prairie Presbytery, and of all such as belonged to said West Prairie Presbytery, or who are members, trustees or agents thereof, who asserted the invalidity of said alleged merger and union, and who are now maintaining the original organization of the Cumberland Presbyterian Church as such at Anniston, Missouri, and the original organization of said West Prairie Presbytery as a Presbytery of the Cumberland Presbyterian Church. That the said Layman and Stewart, together with all persons of whom they are representative, are citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint, as described in a deed recorded in Book V at page 194 in the office of the Recorder of Deeds for St. Francois County, Missouri, alleged to be claimed by the defendant John B. Howell, is described as follows: The northwest corner of Block 69, being 44 feet front on Second Street and running south 142 feet, in the town of DeLassus, according to the plat of said town duly recorded in the Recorder's office of St. Francois County, Missouri, and is situated in the said town of DeLassus in said County of St. Francois, and is the property of the local congregation of the Cumberland Presbyterian Church at said place.

That at the time of said alleged merger and union, and for a long time prior thereto, said property constituted the church property of the said DeLassus congregation of the Cumberland Presbyterian Church, and belonged to and was in the possession of and used by the members and congregation of said Cumberland Presbyterian Church at DeLassus as and for a house of worship.

That the same was conveyed by deed dated the 12th day of December, 1878, to William Benson M. Stone and William P. Porter as trustees for the Cumberland Presbyterian Church, said deed being found of record as aforesaid in the office of the Recorder of Deeds of St. Francois County, Missouri.

At and before said alleged merger and union H. M. Maness and C. L. Keaton (two of the persons averred by this answer to be indispensable parties to this suit) were members of the Cumberland Presbyterian Church within the bounds of the West Prairie Presbytery of said Cumberland

Church, and were members, officers, agents and trustees for said West Prairie Presbytery, a corporation, and Presbytery as aforesaid of the Cumberland Presbyterian Church.

That upon said alleged merger and union said H. M. Maness and C. L. Keaton asserted the validity of the same and claimed and still claim that by virtue thereof they became members of the Presbyterian Church and that the said West Prairie Presbytery of the Cumberland Presbyterian Church became a Presbytery of the Presbyterian Church, and that all the congregations and members of said Cumberland Presbyterian Church within the bounds of said Presbytery and the members, officers and trustees of said trustees of said Presbytery, became members of the Presbyterian Church. They are citizens of the State of Missouri and reside at Dexter, Missouri. That they are representative of the class of persons who at the time of said alleged merger and union belonged to said Cumberland Presbyterian Church within the bounds of said West Prairie Presbytery, and are representative of all who are members of the West Prairie Presbytery and officers, agents and trustees thereof who, upon said alleged merger and union asserted the validity thereof and claimed by virtue thereof that all the members and congregation and its property situate at the town of DeLassus as aforesaid were merged into and became members of the congregations and the property of the Presbyterian Church, and of all that class of persons who were members of the West Prairie Presbytery at the time of said alleged merger and union who claimed by reason thereof that said Presbytery, its members, officers, agents and trustees had been merged into the Presbyterian Church, and had become the Presbytery of such Church, and by reason of such claimed the property described in the deed to have become the property of the Presbyterian Church, and who are claiming the right to the exclusive use, possession and control of the same as such, and the right to exclude the defendants, and those of whom they are representative, from any occupation or use thereof, and that all of said class are citizens and residents of the State of Missouri.

That the defendant John D. Howell was, at the time of said alleged merger and union, a member of said West Prairie Presbytery of the Congregation of the Cumberland Presbyterian Church, and thereupon denied the validity of said union and merger, and asserted the invalidity of the same, and yet claims to be a member of said Cumberland Congregation at said point. That he is representative of all that class of persons who, at the time of said alleged merger and union were members of said Congregation and who dispute the validity of said alleged merger and union, and is representative of all that class of persons who belonged to the West Prairie Presbytery of the Cumberland Presbyterian Church, and were members, officers, agents and trustees thereof, who upon said alleged merger and union asserted the invalidity of the same, and who are now claiming to maintain the original organization of said Presbytery as a

Presbytery of the Cumberland Presbyterian Church. That the defendant Howell is a citizen of the State of Missouri, as well as are also all persons of whom he is representative.

The property referred to in the amendment to the bill of complaint as found in Books 88, page 524, 88, page 615, 154, page 308, and 154, page 309 in the office of the recorder of deeds of Cass County, Missouri, is described as follows: Lots 1, 2, 3, 4, 5, and 6, in Block 21, in the town of Peculiar, in Cass County, Missouri.

That long prior to the time of the alleged merger and union the said property was, by proper deeds, conveyed to the trustees of the Cumberland Presbyterian Church of said town of Peculiar.

That the defendant R. S. Burney was, prior to the time of the alleged merger and union, and is yet, a member and elder of said Cumberland Presbyterian Church, and that he and other members and officers of said Church of which he is a representative, were, at the time of said alleged merger and union and yet are in the possession of and holding title to and the exclusive control and use of the said church property. That the said defendant Burney and the persons whom he represents deny the validity of said alleged merger and union, and claim that the same was invalid and of no effect. That they claim the title to said church property, and the right to the exclusive use and control thereof.

That S. W. Ramsay and H. M. Davis (two of the persons averred by this answer to be indispensable parties to this suit) were, prior to the time of the alleged merger and union members and elders in said Cumberland Presbyterian Church. That upon said alleged merger and union, they, and some other members of said Cumberland Presbyterian Church of which they are representative, abandoned and left said Cumberland Presbyterian Church, and claim and assert the validity of said alleged merger and union and assert that by virtue thereof they became members of said Presbyterian Church, and that the said church property became the church property of said Presbyterian Church and that the said Ramsay and Davis and the class of persons of which they are representative, are entitled to the exclusive possession, use and control of said church property, and deny the right to the use, possession and control of said property by the defendant Burney and the class of persons of which he is a representative.

That the said Ramsay and Davis and the class of persons of which they are representative, and the defendant Burney and the class of persons of which he is representative, at the time of the institution of this suit, all were and yet are residents and citizens of the State of Missouri.

The fund referred to in the amendment to the bill of complaint as "The Reuben A. Ewing Fund" of the amount of \$500.00 and alleged to be for the use of the New Lebanon Presbytery of the Cumberland Presbyterian Church was in fact at the time of the alleged merger and union the property of the New Lebanon Presbytery of the Cumberland

Presbyterian Church and has so been for many years prior thereto.

That at the time of said alleged merger and union, the defendant L. F. Clemens was a member of said New Lebanon Presbytery of the Cumberland Presbyterian Church and he, with others, constituted said Presbytery. That long prior to said alleged merger and union the said William H. H. Stephens mentioned in the amendment to the bill of complaint, and who is averred by this answer to be an indispensable party to this suit, was, by said New Lebanon Presbytery of the Cumberland Presbyterian Church, elected a trustee for said Presbytery for the purpose of holding and managing said fund. And at the time of said alleged merger and union the said William H. H. Stephens as trustee for said New Lebanon Presbytery had the possession, and management, of said fund, and upon said alleged merger and union the said William H. H. Stephens asserted the validity of the same, and claimed by reason thereof to have become a member of the Presbyterian Church, and to have become a trustee for the Sedalia Presbytery of the Presbyterian Church in the management and control of said fund, and asserted and claimed that said fund became the property of the Sedalia Presbytery of the Presbyterian Church; and now asserts said fund to be the property of the Sedalia Presbytery of the Presbyterian Church, and now holds and manages said fund as the property of the Sedalia Presbytery of the Presbyterian Church and denies that the New Lebanon Presbytery of the Cumberland Presbyterian Church has any right or interest in said fund, or the right to the control and the management of the same through him as trustee or otherwise, and refuses to account to the said New Lebanon Presbytery of the Cumberland Church in any respect for the same.

That in truth and in fact said fund is now the property of the New Lebanon Presbytery of the Cumberland Presbyterian Church.

That the defendant L. F. Clemens is a resident of Saline County, Missouri, and is a citizen of the State of Missouri, and is representative of all that class of persons constituting the New Lebanon Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union who asserted the invalidity of the same, and who refused to recognize the validity of the same, and who claim yet to be maintaining the original organization of the New Lebanon Presbytery of the Cumberland Presbyterian Church, and who claim the said Reuben A. Ewing fund as a fund belonging to said Presbytery, and who claim the right to the control and the management thereof. All of the persons members of said class are citizens of the State of Missouri.

That the said William H. H. Stephens is a representative of all that class of persons who at the time of said alleged merger and union were members, officers, agents and trustees of the said New Lebanon Presbytery of the Cumberland Presbyterian Church who asserted the validity of said alleged merger and union and who claim by reason thereof to

have become members, agents or trustees thereof and amenable to the Sedalia Presbytery of the Presbyterian Church.

That said William H. H. Stephens is a citizen of the State of Missouri and resides in Cooper County, Missouri, and the class of persons of whom he is representative are also citizens of the State of Missouri.

The fund referred to in the bill of complaint as "The David H. Densmore Fund" of the amount of One Thousand One Hundred Ninety-eight Dollars and Forty-four Cents (\$1198.44) alleged to be for the use of the Ozark Presbytery of the Cumberland Presbyterian Church was, at the time of the alleged merger and union in fact the money and property of the said Ozark Presbytery of the Cumberland Presbyterian Church, and had so been for many years prior thereto.

That at the time of said alleged merger and union, the defendant, J. Thomas Jones, was a member of said Ozark Presbytery of the Cumberland Presbyterian Church, and he, with others, constituted the said Presbytery. That long prior to said alleged merger and union, the said William K. Howe mentioned in the amendment to the bill of complaint (one of the persons averred by this answer to be an indispensable party to this suit), was, by said Ozark Presbytery of the Cumberland Presbyterian Church, elected trustee for said Presbytery for the purpose of holding and managing said fund.

At the time of said alleged merger and union the said William K. Howe, as trustee for said Ozark Presbytery, had the possession and management of said fund, and upon said alleged merger and union the said William K. Howe asserted the validity of the same, and claimed by reason thereof to have become a member of the Presbyterian Church, and to have become a trustee for the Ozark Presbytery of the Presbyterian Church in the management and control of said fund, and asserted and claimed that said fund became the property of the said Ozark Presbytery of the Presbyterian Church, and now asserts said fund to be the property of the Ozark Presbytery of the Presbyterian Church.

That subsequent to the alleged merger and union the said William K. Howe delivered and turned over possession of said fund and the management thereof to the said Eugene E. Stringfield (another of the persons averred by this answer to be an indispensable party to this suit) as a representative and trustee of the Ozark Presbytery of the Presbyterian Church, and the said Eugene E. Stringfield now holds and manages said fund as the property of said Ozark Presbytery of the Presbyterian Church, and both he and the said William K. Howe deny that the Ozark Presbytery of the Cumberland Presbyterian Church has any right or interest in said fund or the right to the control and the management of the same through trustee or otherwise. And they and each of them refuse to account to the said Ozark Presbytery of the Cumberland Presbyterian Church in any respect for the same, but are using and treating the same as the property of the Ozark Presbytery of the Presbyterian Church. That in truth and in

fact said fund is now the property of the Ozark Presbytery of the Cumberland Presbytery Church.

That the defendant J. Thomas Jones is a resident of Ozark county in the state of Missouri and a citizen of the state of Missouri and is representative of all that class of persons constituting the Ozark Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union who asserted the invalidity of the same and who refuse to recognize the validity of the same, and who claim yet to be maintaining the original organization of the Ozark Presbytery of the Cumberland Presbyterian Church, and who claim the said David H. Densmore fund as a fund belonging to said Presbytery, and who claim the right to the control and management thereof. All of the persons of said class are citizens of the state of Missouri.

That the said William K. Howe and the said Eugene E. Stringfield are representative of all that class of persons who at the time of said alleged merger and union were members, officers, agents and trustees of the said Ozark Presbytery of the Cumberland Presbyterian Church and who asserted the validity of said alleged merger and union and who claimed by reason thereof to have become members, agents or officers of and amenable to the Ozark Presbytery of the Presbyterian Church. That the said William K. Howe and the said Eugene E. Stringfield are each citizens of the state of Missouri. The said Eugene E. Stringfield being a resident of Ozark county in said state, and the said William K. Howe being a resident of _____ county in said state, and the class of persons of whom they are representative are also citizens of the state of Missouri.

The fund referred to in the amendment to the Bill of Complaint as "The Ozark College Fund" of the amount of \$700 and interest thereon, alleged to be for the use of the Ozark Presbytery of the Cumberland Presbyterian Church, was in fact at the time of the alleged merger and union the property of the Ozark Presbytery of the Cumberland Presbyterian Church, and had so been for many years prior thereto. That at the time of said alleged merger and union the defendant J. Thomas Jones was a member of said Ozark Presbytery of the Cumberland Presbyterian Church, and he, with others, constituted said Presbytery.

That long prior to said alleged merger and union the said William R. Russell mentioned in the amendment to the Bill of Complaint (one of the persons averred by this answer to be an indispensable party to this suit) was by said Ozark Presbytery of the Cumberland Presbyterian Church elected a trustee for said Presbytery for the purpose of holding and managing said fund, and at the time of said alleged merger and union the said William R. Russell as trustee for said Ozark Presbytery of the Cumberland Presbyterian Church had the possession and management of said fund, and upon said alleged merger and union the said William R. Russell asserted the validity of the same and claimed by reason thereof to have become members of the Presbyterian Church, and to have be-

come a trustee for the Ozark Presbytery of the Presbyterian church in the management and control of said fund, and asserted and claimed that said fund became the property of the Ozark Presbytery of the Presbyterian Church, and now asserts said fund to be the property of the Ozark Presbytery of the Presbyterian Church and now holds and manages said fund as the property of the Ozark Presbytery of the Presbyterian Church, and denies that the Ozark Presbytery of the Cumberland Presbyterian Church has any right or interest in said fund or the right to the control and management of the same through him as trustee or otherwise, and refuses to account to the said Ozark Presbytery of the Cumberland Presbyterian Church in any respect for the same.

That in truth and in fact said fund is now the property of the Ozark Presbytery of the Cumberland Presbyterian Church.

That the defendant J. Thomas Jones is a resident of Ozark county, Missouri, and is a citizen of the state of Missouri, and is representative of all that class of persons constituting the Ozark Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union who asserted the invalidity of the same, and who refuse to recognize the validity of the same, and who claim yet to be maintaining the original organization of the Ozark Presbytery of the Cumberland Presbyterian Church, and who claim the said Ozark College fund as a fund belonging to said Presbytery, and who claim the right to the use, control and management thereof. All of the persons members of said class are citizens of the state of Missouri.

That the said William R. Russell is a representative of all that class of persons who at the time of said alleged merger and union were members, officers, agents and trustees of the said Ozark Presbytery of the Cumberland Presbyterian Church who asserted the validity of the said alleged merger and union and who claim by reason thereof to have become members, agents or trustees of and amenable to the Ozark Presbytery of the Presbyterian Church. That the said William R. Russell is a citizen of the state of Missouri and resides in Ozark county, Missouri, and the class of persons of whom he is representative are also citizens of the state of Missouri.

The funds referred to in the amendment to the Bill of Complaint as "The Fossil Fund of \$1,200," "The Fleming-Mitchell-Miller Memorial Fund of \$600," "The Dearborn Church House Fund of \$350," "The Rock Creek Church House Fund of \$299," and "The Grand River Church House Fund of \$250," making an aggregate total of \$2,899 alleged to be held by trustees for the use of the Platte Presbytery of the Cumberland Presbyterian Church, were in fact at the time of the alleged merger and union the property of the Platte Presbytery of the Cumberland Presbyterian Church and held by trustees for its use, and had been so held for many years prior thereto.

That at the time of said alleged merger and union the defendant Albert W. Green was a member of Platte Presby-

tery of the Cumberland Presbyterian Church, and he, with others, constituted said Presbytery.

That long prior to said alleged merger and union the said Luke H. Moss, George Ward, William D. Maxwell, Robert Onstott and Bruce Mitchellhill, mentioned in the amendment to the Bill of Complaint (each of whom are averred by this answer to be indispensable parties to this suit), were by said Platte Presbytery of the Cumberland Presbyterian Church elected trustees for said Presbytery for the purpose of holding and managing said funds. And at the time of said alleged merger and union the said Luke H. Moss, George Ward, William D. Maxwell, Robert Onstott and Bruce Mitchellhill, as trustees for said Platte Presbytery, had the possession and management of each of said funds; and upon said alleged merger and union they, the said Luke H. Moss, George Ward, William D. Maxwell, Robert Onstott and Bruce Mitchellhill, asserted the validity of the same and claimed by reason thereof to have become members of the Presbyterian Church, and to have become trustees for the St. Joseph Presbytery of the Presbyterian Church in the management and control of said funds, and asserted and claimed that said funds became the property of the St. Joseph Presbytery of the Presbyterian Church, and now assert said funds to be the property of the St. Joseph Presbytery of the Presbyterian Church and they now hold and manage said funds as the property of the St. Joseph Presbytery of the Presbyterian Church, and deny that the Platte Presbytery of the Cumberland Presbyterian Church has any right or interest in said funds, or any of them, or the right to the control and the management of the same through them as trustees or otherwise, and they refuse to account to the said Platte Presbytery of the Cumberland Church in any respect for the same. That in truth and in fact said funds, and each of them, are now the property of the Platte Presbytery of the Cumberland Presbytery Church.

That the defendant Albert W. Green is a resident of Buchanan county, Missouri, and is a citizen of the state of Missouri, and is representative of all that class of persons constituting the Platte Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union who refused to recognize the validity of the same, and who asserted the invalidity of the same, and who claim yet to be maintaining the original organization of the Platte Presbytery of the Cumberland Presbyterian Church, and who claim the said funds, and each of them, as belonging to said Presbytery, and who claim the right to the use, control and management of the same. All of the persons members of said class are citizen of the state of Missouri.

That the said Luke H. Moss, George Ward, William D. Maxwell, Robert Onstott and Bruce Mitchellhill are representative of all that class of persons who at the time of said alleged merger and union were members, officers and trustees of the said Platte Presbytery of the Cumberland Presbyterian Church who asserted the validity of the said alleged merger and union and who claimed by reason thereof to have become members,

agents or trustees of and amenable to the St. Joseph Presbytery of the Presbyterian Church. That the said Luke H. Moss, George Ward, William D. Maxwell, Robert Onstott and Bruce Mitchellhill are citizens of the state of Missouri and reside in Buchanan county; and the class of persons of whom they are representative are also citizens of the state of Missouri.

The fund referred to in the amendment to the Bill of Complaint as "The Jamesport Church Fund" of the amount of \$600, and alleged to be for the use of the Chillicothe Presbytery of the Cumberland Presbyterian Church, was, in fact, at the time of the alleged merger and union the property of the Chillicothe Presbytery of the Cumberland Presbyterian Church, and had so been for many years prior thereto.

Subsequent to the time of the alleged merger and union the Chillicothe Presbytery of the Cumberland Presbyterian Church became merged into and consolidated with the Platte Presbytery of the Cumberland Presbyterian Church, and is now a member of and under the jurisdiction of the said Platte Presbytery of the said Cumberland Presbyterian Church.

Long prior to said alleged merger and union the said Hal F. Smith, mentioned in the amendment to the Bill of Complaint (one of the persons averred by this answer to be an indispensable party to this suit), was by said Chillicothe Presbytery of the Cumberland Presbyterian Church elected a trustee for said Presbytery for the purpose of holding and managing said fund. And at the time of said alleged merger and union the said Hal F. Smith, as trustee for said Chillicothe Presbytery, had the possession and management of said fund, and upon said alleged merger and union the said Hal F. Smith asserted the validity of the same and claimed by reason thereof to have become a member of the Presbyterian Church and to have become a trustee for the McGee Presbytery of the Presbyterian Church in the management and control of said fund, and asserted and claimed that said fund became the property of the McGee Presbytery of the Presbyterian Church, and now asserts said fund to be the property of the McGee Presbytery of the Presbyterian Church, and now holds and manages said fund as the property of the McGee Presbytery of the Presbyterian Church, and denies that the Chillicothe Presbytery of the Cumberland Presbyterian Church or that the Platte Presbytery into which the said Chillicothe Presbytery has been merged and with which it has been consolidated has any right or interest in said fund, or has the right to the control and the management of the same through him as trustee or otherwise, and refuse to account to the said Platte Presbytery of the Cumberland Presbyterian Church in any respect for the same. In truth and in fact, said fund is now the property of the Platte Presbytery of the Cumberland Presbyterian church.

That the defendant Albert W. Green is a resident of Buchanan County, Missouri, and is a citizen of the State of Missouri, and is representative of all that class of persons constituting the Chillicothe Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union who

asserted the invalidity of the same, and who refused to recognize the validity of the same, and who merged said Chillicothe Presbytery into and consolidated the same with the Platte Presbytery of the Cumberland Presbyterian Church, and who by such means now claim said funds to belong to the Platte Presbytery of the Cumberland Presbyterian Church, and who claim to be maintaining the original organization of said Platte Presbytery as a Presbytery of the Cumberland Presbyterian Church, and who, as such, claim the right to the use, control and management of said fund. All of the persons members of said class are citizens of the State of Missouri.

That the said Hal F. Smith is a representative of all that class of persons who at the time of said alleged merger and union were members, officers, agents and trustees of the said Chillicothe Presbytery of the Cumberland Presbyterian Church who asserted the validity of the said alleged merger and union, and who claimed by reason thereof to have become members, agents or trustees of and amenable to the McGee Presbytery of the Presbyterian Church.

That the said L. F. Smith is a citizen of the State of Missouri and resides in Livingston County, Missouri; and the class of persons of whom he is representative are also citizens of the State of Missouri.

The funds referred to in the amendments to the Bill of Complaint as being held by John C. Cobb and others as trustees of Lexington Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union for the use of said Lexington Presbytery of the Cumberland Presbyterian Church was in fact, at the time of the alleged merger and union, the property of the said New Lebanon Presbytery of the Cumberland Presbyterian Church, and had so been for many years prior thereto.

That at the time of said alleged merger and union the defendant Samuel H. McElvain was a member of said Lexington Presbytery of the Cumberland Church, and he with others constituted said Presbytery. That long prior to said alleged merger and union the said John C. Cobb mentioned in the amendment to the Bill of Complaint (one of the persons averred by this answer to be an indispensable party to this suit) was, with others, by said Lexington Presbytery of the Cumberland Presbyterian Church elected trustee for said Presbytery for the purpose of holding and managing said funds. And at the time of said alleged merger and union the said John C. Cobb as trustee for said Lexington Presbytery had the possession and management of said funds, and upon said alleged merger and union the said John C. Cobb asserted the validity of the same, and claimed by reason thereof to have become a member of the Presbyterian Church, and to have become a trustee for the Kansas City Presbytery of the Presbyterian Church in the management and control of said funds, and asserted and claimed that the said funds became the property of the Kansas City Presbytery of the Presbyterian Church, and now asserts said funds to be the property of the Kansas City Presbytery of the Presbyterian Church, and now holds

and manages said funds as the property of the Kansas City Presbytery of the Presbyterian Church, and denies that the Lexington Presbytery of the Cumberland Presbyterian Church has any right or interest in said funds, or the right to the control and the management of the same through him as trustee or otherwise, and refuses to account to the said Lexington Presbytery of the Cumberland Presbyterian Church in any respect for the same.

That in truth and in fact said fund is now the property of the Lexington Presbytery of the Cumberland Presbyterian Church.

That the defendant S. H. McElvain is a resident of Saline County, Missouri, and is a citizen of the State of Missouri, and is representative of all that class of persons constituting the Lexington Presbytery of the Cumberland Presbyterian Church at the time of the alleged merger and union, who asserted the invalidity of the same and refused to recognize the validity of the same, and who claim yet to be maintaining the original organization of the Lexington Presbytery of the Cumberland Presbyterian Church, and who claim said funds as funds of said Presbytery, and who claim the right to the control and management thereof. All of the persons members of said class are citizens of the State of Missouri.

That the said John C. Cobb is a representative of all that class of persons who, at the time of said alleged merger and union, were members, officers, agents and trustees of the said Lexington Presbytery of the Cumberland Presbyterian Church who asserted the validity of said alleged merger and union, and who claimed by reason thereof to have become members, agents or trustees of and amenable to the Kansas City Presbytery of the Presbyterian Church.

That the said John C. Cobb is a citizen of the State of Missouri and resides in Lafayette County, Missouri, and the class of persons whom he represents are also citizens of the State of Missouri.

The property referred to in the amendment to the Bill of Complaint as being held by G. W. Shaw, J. R. Campbell and M. B. Shipp under the will of Freddie Nichols, deceased, as composing the session of the Grand Prairie Presbyterian Church of Randolph, Missouri, together with the property alleged to be held by them as trustees under the will of Freddie Nichols, and alleged to be claimed by the defendant Alonzo M. Buchanan, was, at the time of the alleged merger and union, in fact the property of the local congregation of the Cumberland Presbyterian Church, known as the Grand Prairie Cumberland Presbyterian Church in Randolph County, Missouri, and had so been for many years prior thereto.

That at the time of the alleged merger and union the defendant Alonzo M. Buchanan was a member of the Cumberland Presbyterian Church, being a minister of the McGee Presbytery of said church. That the Grand Prairie congregation in Randolph County, Missouri, is the congregation of the Cumberland Presbyterian Church within the bounds of said McGee Presbytery. That long prior to said alleged merger and union the said G. W. Shaw, J. R. Campbell and M. B. Shipp, mentioned

in the amendment to the Bill of Complaint (three of the persons averred by this answer to be indispensable parties to this suit), were elders and with others composed the session of Grand Prairie congregation of the Cumberland Presbyterian Church in said Randolph County, Missouri, and as such and as trustees named in the will of Freddie Nichols, deceased, were holding the sum of \$200 mentioned in the amendment to the Bill of Complaint as the property of and for the use and benefit of said Grand Prairie Presbyterian Church; and as trustees for said congregation were holding under the will of said Freddie Nichols, deceased, as the property of said Grand Prairie congregation of the Cumberland Presbyterian Church for the use and benefit of said congregation the remainder and fee simple to the 120 acres of land described in the will of said Freddie Nichols, which will is found of record in the Book of Wills H, at page 350, in the office of the Recorder of Deeds of said Randolph County, Missouri.

That at the time of said alleged merger and union the said G. W. Shaw, J. R. Campbell and M. B. Shipp as trustees and elders of said Grand Prairie congregation had the possession, management and control of said fund and of said real property, and upon said alleged merger and union the said G. W. Shaw, J. R. Campbell and M. B. Shipp asserted the validity of said merger and union and claimed by reason thereof to have become members of the Presbyterian Church and to have become elders and trustees thereof, and therefore in the holding, management and control of both said real estate and of said fund; and asserted and claimed that the same became the property of Grand Prairie congregation of the Presbyterian Church, and now assert said property to be the property of the Grand Prairie congregation of the Presbyterian Church, and now hold and manage the same as the property of the Grand Prairie Congregation of the Presbyterian Church, and deny that the Grand Prairie congregation of the Cumberland Presbyterian Church has any right or interest in any of said property, or the right to the control, use or the management of the same through them as trustees or otherwise, and refuse to account to the said Grand Prairie congregation of the Cumberland Presbyterian Church in any respect for the same.

That in truth and in fact said property is now the property of the said Grand Prairie congregation of the Cumberland Presbyterian Church.

That the defendant Alonzo M. Buchanan is a resident of Randolph County, Missouri, and is a citizen of the State of Missouri, and is representative of all that class of persons constituting the Grand Prairie congregation of the Cumberland Presbyterian Church at the time of the alleged merger and union who denied the validity of the same, and who asserted the invalidity of the same, and who claim yet to be maintaining the original organization of the Grand Prairie congregation of the Cumberland Presbyterian Church, and who claim the said property described in the amendment to the Bill of Complaint, and who claim the right to the use, control and management

thereof; all of the persons members of said class being citizens of the State of Missouri.

That the said G. W. Shaw, J. R. Campbell and M. B. Shipp are representative of all that class of persons who, at the time of said alleged merger and union, were members, elders or trustees of said Grand Prairie congregation of the Cumberland Presbyterian Church who assert the validity of said alleged merger and union, and who claim by reason thereof to have become members, elders and trustees of and amenable to the Grand Prairie Congregation of the Presbyterian Church. That the said G. W. Shaw, J. R. Campbell and M. B. Shipp, they and each of them, are citizens of the State of Missouri, residing in Randolph County, Missouri, and the class of persons of whom they are representative are also citizens of the State of Missouri.

At and for a long time before said alleged merger and union the property in Cass County, described in the amendment to the Bill of Complaint as Lot 75 in Block 27 in the city of Harrisonville, constituted the local church property of the congregation of the Cumberland Presbyterian Church at said Harrisonville, and belonged to and was used by the members and congregation of the said Cumberland Presbyterian Church as and for a house of worship.

Said property was conveyed by deed dated the 25th day of October, 1909, by its then owners to John Lamar, Jr., Robert Foster and J. C. Slenker, trustees of the Harrisonville congregation of the Cumberland Presbyterian Church at Harrisonville, Missouri, to be held by said trustees and their successors for the use and benefit of said congregation of the Cumberland Presbyterian Church of Harrisonville, Missouri.

At and before said alleged merger and union one Charles W. Sloan and Ernest Hockaday (two of the persons averred by this answer to be indispensable parties to this suit) were members of the said Cumberland Presbyterian Church at Harrisonville, and officers of said church. Upon said alleged merger and union said Hockaday and said Sloan asserted the validity thereof and claimed and still claim, by reason thereof, to have become members of the Presbyterian Church, and are representative of all that class of person who, as members and officers of the Cumberland Presbyterian Church at Harrisonville at the time of said alleged merger and union asserted the validity thereof, and claimed to have become members of the Presbyterian Church, and who now claim to be members of the Presbyterian Church, and who now, as members and officers of said church claim to have the title to said property, and assert and claim the exclusive right to the use, occupation, control and management of said property, and who exclude therefrom and from use, control and management thereof the defendants John Lamar and Robert L. Foster, and all that class of persons whom they are alleged in the Bill of Complaint to represent, being all the members and officers of the said Cumberland Presbyterian Church at Harrisonville at the time of said alleged merger and union who refused to recognize the validity of the same, and who asserted the invalidity of the same, and who claim to be members of the original organization of said Cumberland Presbyterian Church of Harrisonville.

That the said Sloan and Hockaday, and the class of persons of whom they are representative, are now members of the Presbyterian Church and actively engaged in promoting its organization at said city of Harrisonville; and they and all those whom they represent and all the class whom they represent are citizens of the State of Missouri.

21. These defendants further answering aver that following the attempt at union and merger of the Cumberland Presbyterian Church and the Presbyterian Church of the United States in America, mentioned in the bill of complaint, these defendants and a very large number of other members of the Cumberland Presbyterian Church in the State of Missouri refused to acquiesce in said scheme of union, and to become members of the Presbyterian Church in the United States of America, or to willingly surrender to said last named Church or to those former members going from them the houses of worship and other property the title to which was held and conveyed for the use and benefit of the local Congregations of the Cumberland Presbyterian Church; whereupon certain of those persons who did acquiesce in the said scheme, some of whom had been members of the said Cumberland Presbyterian Church in the City of Warrensburg in the State of Missouri, and some of whom had been members of the Presbyterian Church in the United States of America brought suit on the 10th day of August, 1906, in the Circuit Court of Johnson County, State of Missouri, in their own behalf and in behalf of all members of the Presbyterian Church in the United States of America, and especially in behalf of those members of said Church who formerly belonged to the Cumberland Presbyterian Church and who adhered to the said Presbyterian Church in the City of Warrensburg, Missouri, against other persons, members of the Cumberland Presbyterian Church at said Warrensburg, Missouri, who refused to acquiesce in the said scheme and to become members of the Presbyterian Church in the United States of America, making them defendants as in their personal capacity and also as representative of other persons not named who were non-acquiescing members of the Cumberland Presbyterian Church at said Warrensburg. The style of said cause was as follows:

"C. A. Boyles, B. L. Seawell, C. D. Middleton, E. B. Stockton and A. D. Redford, being the elders of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, W. C. Knapp, F. M. Walters, John C. Scroggs, who with the aforesaid plaintiffs constitute the elders of the Presbyterian Church in the United States of America, and Samuel Gavin, pastor of what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and now pastor of the Presbyterian Church in the United States of America, C. O. Ozias, S. H. Coleman, G. W. Martin, Vance J. Day, Sam T. Bratton, J. R. Rothwell, Edward Beatty, and Grover Gillium, being deacons of what was the Cumberland Presbyterian Church at Warrensburg, Missouri, who with G. M. Gilbert, William Shockley, A. J. Hutchison, and E. L. Thurber, are now deacons of the

United Church, that is, the Presbyterian Church in the United States of America, at Warrensburg, Missouri, all of said Elders, Deacons and Pastors, plaintiffs, suing not only in their individual capacity but in their official and representative capacity as set forth in their caption and in this bill, and in behalf of all the other officers and members of the Presbyterian Church in the United States of America, situated at Warrensburg, Missouri, they being too numerous to name herein, Plaintiffs, v. *J. L. Roberts, W. K. Morrow and T. J. Summers*, the former two being trustees of what was the Warrensburg Cumberland Presbyterian Church, and together with one, F. M. Cockrell, had held the title to said church property, and Jay Ray Ramsey, a Deacon in what was the Cumberland Presbyterian Church of Warrensburg, Missouri, and all other officers and members of the Cumberland Presbyterian Church who renounced or refused to recognize the United Church known as the Presbyterian Church in the United States of America, they being too numerous to mention herein, defendants."

The amended petition or bill in that cause, upon which the same was tried, described certain real estate situated in said City of Warrensburg which had been, as the petition stated, conveyed many years before to certain persons (two of them being defendants in said suit) as trustees for the Cumberland Presbyterian Church of Warrensburg Congregation, and averred that on said real estate was situated the church building in which was contained the church property of what was the Cumberland Presbyterian Church of Warrensburg, Missouri.

It was further alleged in said amended petition or bill that the defendants, or some of them, in the actual possession of said real estate and said Church as Trustees and that they refused to permit the plaintiffs in said cause, or those whom they represented, to use the same.

Said amended petition or bill set out the proceedings in the General Assemblies, Presbyteries, and Synods of the Presbyterian Church in the United States of America and of the said Cumberland Presbyterian Church claimed by the plaintiffs therein to have resulted in said alleged union of the two churches in substantially the same manner as they are averred in the bill of complaint in this cause. Said amended petition or bill averred in substance that while the plaintiffs therein asserted that the union of the two churches had been legally effectuated and that the said Cumberland Presbyterian Church had, by said union, ceased to exist, and that the church property in said Warrensburg which had once been devoted to the use of said Cumberland Presbyterian Church had by operation of law become devoted since said alleged union to the uses of the said Presbyterian Church in the United States of America, and that the defendants in said bill and those whom they represented, disputed the fact that any union of the said two churches had been consummated; that they denied the validity of the proceedings which were claimed by the plaintiffs to have resulted in such union; and that they claimed that the

Cumberland Presbyterian Church still existed, and that the church property in Warrensburg was still, as before, devoted to the uses of said Cumberland Presbyterian Church.

The controlling question in said cause was whether the alleged union of the two churches had in fact been accomplished, and was legal, valid and effectual; the plaintiffs asserting its legality and validity, and the defendants disputing the same. The controlling question in said cause was the same as the controlling question in the suit in this court in which the bill of complaint is filed.

The prayer of said amended petition or bill was as follows:

"Plaintiffs therefore pray that all of the ministers, officers, members, boards, committees, employes and agents of every character and description who are or claim to be part of the so-called Cumberland Presbyterian Church of Warrensburg, Missouri, be made defendants to this bill and be represented by name defendants herein enumerated, and that said named defendants be required to defend for themselves and their unnamed co-defendants.

Wherefore, in consideration of the premises plaintiffs pray that the defendants named in the caption of the bill be required to make defense of this bill; that on final hearing decree be rendered declaring that said union between said churches was legally formed and is valid; that all of the property rights possessed by the Cumberland Presbyterian Church or any of its judicatories or congregations, passed by operation of law as a result of the union with said judicatories or congregations, into the United Church; that all ministers, officers and members belonging to what was the Cumberland Presbyterian Church and adhering to the Presbyterian Church in the United States of America, constitute the true and lawful members of the various congregations, sessions, boards of Deacons of the various congregations and that all who have renounced or shall renounce said Union Church, have ceased, or will cease to be members of the Congregations, Sessions, Boards of Deacons, Presbyteries or Synods which formerly constituted the Congregations, Boards of Deacons, Presbyteries or Synods of the Cumberland Presbyterian Church; that all Elders and Deacons so renouncing the United Church have or will cease to be Elders or Deacons in said congregations, and cease to have any right to control or hold possession of any property belonging or appertaining to their respective congregations; that all pastors of churches so renouncing the Union Church have or will vacate their respective pastorates, and that all such renunciators will forfeit all their rights of property and all other rights and privileges as members, officers, or ministers in said judicatories; plaintiffs especially pray that the elders loyal to the United Church of Warrensburg, Missouri, be placed in the immediate possession of the church property at said place, and their rights be declared and their possession be protected.

And further pray the court to enjoin the ministers, officers and members of the Cumberland Presbyterian Church

at Warrensburg, Missouri, who repudiate and renounce the action of the General Assembly, and the Presbyteries of said churches in agreeing to and forming a union with the Presbyterian Church in the United States of America, or who renounce the United Church resulting from said union, known as the Presbyterian Church in the United States of America, together with all their associates, confederates, agents and representatives, and that said persons be enjoined from doing the following things, to-wit:

FIRST: From interfering with or molesting the Pastors, Elders, Deacons, Church Members, or other Ecclesiastical agencies who adhere to and recognize said Union Church in the use, enjoyment, possession and exclusive control of all houses of worship, parsonages, endowment funds or other property or effects which belong to the Cumberland Presbyterian Church or any of its Boards, Committees, Judicatories, Congregations or Institutions, or held in trust for them.

SECOND: From using the name of the Cumberland Presbyterian Church as the name or any part of the name of any of their organizations, congregations, sessions, Presbyteries, Synods, General Assemblies, Boards, Committees or other Ecclesiastical Judicatories, Institutions or Agencies in connection with the claim on the part of said Judicatory, organization or agency, or any one acting for it, that it is a judicatory, organization or agency of the original Cumberland Presbyterian Church as organized in 1910 as described in said deeds.

And plaintiffs pray for such other and further relief as the court in equity and good conscience may find them entitled to.

(Signed) J. W. SUDDATH,
W. K. WILLIAMS,
O. L. HOUTS,
Attorneys for Plaintiffs.

A copy of said amended petition or bill is hereto attached as Exhibit "B" and made a part of this answer.

Said cause having been removed to the Circuit Court of Cooper County, Missouri, by change of venue, upon final hearing said last named court rendered a decree for the plaintiffs in said suit and against the defendants. Whereupon the defendants took and prosecuted their appeal from said judgment and decree to the Supreme Court of the State of Missouri. Said last named court, after hearing and considering the appeal, rendered its judgment and decree in said cause on the 8th day of June, 1909. Said judgment and decree of the said Supreme Court reversed said judgment and decree of the Circuit Court of Cooper County, and remanded the cause with directions to said Circuit Court to dismiss the plaintiffs' petition and enter judgment in favor of the defendants therein and against the plaintiffs for all costs. A copy of said judgment and decree of the Supreme Court is hereto attached as Exhibit "C" and made a part of this answer.

At the same time, as required by law, the Supreme Court of Missouri filed its opinion in writing in said cause by which it was declared and determined that said attempted Union

of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church and the proceedings by virtue of which said union was claimed, were null, void and of no effect, and that the property of the Cumberland Presbyterian Church and property held in trust for its use or its benefit or the promotion of its doctrines was still held for the same purpose for the benefit of those members of the Cumberland Presbyterian Church who had refused to acquiesce in said scheme of union; and that therefore neither the Presbyterian Church in the United States of America, nor any of its judicatories, general assemblies, synods, presbyteries, boards and congregations or members of said church had, by virtue of said pretended union, any interest whatever in any such property. And a motion for a rehearing of said cause was denied by said Supreme Court October 22nd, 1909.

The opinion of said Supreme Court on hearing and on denying the motion for a rehearing is officially reported in volume 222 of the report of the opinion of said court at page 613, and a copy thereof is herewith filed and marked Exhibit "D" and made a part of this answer.

22. These defendants, further answering that part of the Bill of Complaint which refers to the following described property in Henry county, Missouri, to-wit, one-half acre commencing at a point 208 $\frac{1}{3}$ feet due north of the southeast corner of section ten (10), township forty-one (41), range twenty-seven (27); thence north 208 $\frac{1}{3}$ feet; thence west 208 $\frac{1}{3}$ feet; thence south 208 $\frac{1}{3}$ feet; thence east 208 $\frac{1}{3}$ feet to the place of beginning, avers as follows:

On the 9th day of August, 1907, the plaintiff James G. Turk began his action in the Circuit Court of Henry County, Missouri, against Oscar A. Mitchell, Charles Mertel and William F. Ming, trustees of the Mount Carmel Presbyterian Church of the United States of America; Oscar A. Mitchell, Lewis Hendrick and George N. Angle, elders of the Mount Carmel Presbyterian Church of the United States of America; J. S. Turk, E. D. Johnson and William F. Ming, as trustees of the Mount Carmel Cumberland Presbyterian Church, and J. S. Turk and E. D. Johnson as elders of the Mount Carmel Cumberland Presbyterian Church, in which said action the title, possession and right to the use of said real estate were, by the pleadings, questions in issue; the said Oscar A. Mitchell, Charles Mertel and William F. Ming claiming that by virtue of the alleged merger and union mentioned in the bill of complaint they, as trustees of the Mount Carmel Presbyterian Church of the United States of America, had become possessed of such title and had the right to the possession and use of said property, and the said Oscar A. Mitchell, Lewis Hendrick and George N. Angle, as elders of the Mount Carmel Presbyterian Church of the United States of America, claiming and asserting that for the same reason the members of the congregation of said Mount Carmel Presbyterian Church of the United States of America were entitled to occupy and use the same; and the said J. S. Turk and E. D. Johnson, as trustees of the Mount Carmel Cumberland Presbyterian Church and

also as elders of the Mount Carmel Cumberland Presbyterian Church, claiming, on their part, that they as such, and the members of the congregation of the Mount Carmel Cumberland Presbyterian Church, were entitled to the possession and use of the same, as they had always been before such alleged merger and union.

The question at issue in said cause was as to the validity of such alleged merger and union, and which of the two parties thus opposing each other, representatives of the Presbyterian Church of the United States of America, on the one hand, and representatives of the Cumberland Presbyterian Church on the other, were entitled to the possession and use of said property.

And in said cause the said court, by its decree rendered and entered on the 5th day of November, 1909, found that the said E. D. Johnson and J. S. Turk, as such trustees and elders of said Mount Carmel Cumberland Presbyterian Church, were entitled to said real estate for the use and benefit of the members of the congregation of the said Mount Carmel Presbyterian Church who were loyal to the tenets and organization of the said Cumberland Presbyterian Church; and it was by the court considered, adjudged and decreed that the title to said property be and the same was thereby declared to be held in trust by the said E. D. Johnson and J. S. Turk as trustees of said Mount Carmel Cumberland Church, for the use and benefit of the members of the congregation of said church who were loyal to the faith and organization of said church; that is to say, who disputed and denied the validity of said alleged merger and union, and still claimed to be members, as they always had been, of said Mount Carmel Cumberland Presbyterian Church, which said judgment and decree remains unappealed from. And after the rendition of the same the said persons, parties to said suit, representatives of the Presbyterian Church of the United States of America, who had been in possession of said property, surrendered it to their said opponents, in accordance with the decree of said court, and the same ever since that time has been and is now in the possession of the said E. D. Johnson and J. S. Turk, as trustees, elders and representatives of the Mount Carmel Cumberland Presbyterian Church.

And these defendants aver that said proceedings and said judgment and decree are, and they plead the same in bar of this suit, so far as the same pertains or relates to said real estate.

A copy of said judgment and decree is hereto attached, marked Exhibit "B," and made a part of this answer.

23. These defendants aver that after the aforesaid decision and opinion of the Supreme Court of Missouri, and long before the filing of the Bill of Complaint in this case, the defendants Hugh Hayes and G. E. C. Sharp and others, officers and members of the Cumberland Presbyterian Church at Marshall, in Saline county, Missouri, brought their action in the said Circuit Court of Saline County against the said David F. Manning and the said L. M. Morrow (hereinbefore mentioned

as indispensable parties to this action) and other persons, officers and members of the Presbyterian Church in the United States of America, at said Marshall, the purpose of which said action was to have determined and declared in the plaintiffs therein and those whom they represented the title, legal, equitable and beneficial, of the properties mentioned in the Bill of Complaint in said city of Marshall, and to recover from the defendants in said action the possession of said property, the principal and fundamental issue in said action being whether said alleged merger and union was valid or invalid, which said action is still pending; and these defendants aver that until said suit in said Circuit Court of Saline County is finally determined this cause ought not to proceed as to said property so situated in the said city of Marshall.

These defendants aver that the complainants and those for whom they sue, as appears from the Bill of Complaint and the amendments thereto, have no interest in any of the property mentioned in the Bill of Complaint or said amendments, unless and except by virtue of the said scheme of union and merger, which has by the court of last resort of the state of Missouri, whose jurisdiction was invoked in the said case of *Boyles et al. v. Roberts et al.* by persons claiming the validity of said alleged merger and union, been adjudged invalid, null and void, these defendants not admitting by this averment that even if said scheme of union and merger were valid, the complainants or either of them have any such interest in any of the property mentioned in the Bill of Complaint or the amendments thereto as to entitle them to maintain this action. The complainants bring their Bill of Complaint for the obvious purpose of defeating the result of that decision and nullifying the same. They have now, by this suit, invoked the jurisdiction of this court in order to reopen a controversy settled by the Supreme Court of the State of Missouri, within whose territorial jurisdiction the property involved is situated. They have intentionally and improperly omitted to make as parties to this suit the said persons who, this answer avers, are indispensable parties thereto, because if they were made parties, as they should be, the case would not present a controversy between citizens of different states; the controversy would be one between the persons whom they have so omitted to make parties, citizens of the state of Missouri, on the one side, and these answering defendants, also citizens of the state of Missouri, on the other side. These defendants say that the complainants should not be permitted improperly to make, join and omit parties, as they have done in this case, for the purpose of presenting a supposed and unreal controversy between citizens of different states, and to create thereby a cause cognizable in this court, when in fact, as shown in this answer, the real controversy is between citizens of the same state, and they ask and pray that upon final hearing the bill be dismissed for said cause.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged; without this, that there is any other matter,

cause or thing in said complainants' Bill of Complaint contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

86. The defendants offer in evidence the opening and adjourning orders of the Synod of Missouri of the Cumberland Presbyterian Church, for the year of 1905, from the printed Minutes of that body for such year as follows:

The Synod of Missouri of the Cumberland Presbyterian Church met pursuant to adjournment in the Cumberland Presbyterian Church of Odessa, Missouri, on the 10th day of October, 1905, at 7:30 p. m., and was called to order by the Moderator, Rev. G. P. Baity.

The Synod then adjourned with prayer by Rev. R. L. Layman to meet in the Cumberland Presbyterian Church of Louisiana, Mo., on Tuesday next preceding the third Sunday in October, 1906, being the 16th day, at 7:30 p. m.

87. The defendants offer from the minutes of the Synod of Missouri 'A' of the Presbyterian Church in the United States of America, for October 16th, 18th, 1906, the names of W. T. Baird, J. C. Cobb, Ben Eli Guthrie, C. A. Boyles, W. H. Black, E. D. Pearson and J. M. Hubbert, from the roll call of ministers present at said session of Synod found at pages 6 and 7 of said Minutes, as follows:

Roll Call.

W. T. Baird, Kirksville,
C. A. Boyles, Warrensburg,
J. C. Cobb, Odessa,
Ben Eli Guthrie, LL. D.,
W. H. Black D. D.,
J. M. Hubbert,
E. D. Pearson, D. D., LL. D.

Respectfully submitted,

W. C. CALDWELL,
S. B. LADD,
T. B. ALLEN and
R. M. REYNOLDS

Solicitors for the Defendants.



IN THE

**District Court of The United States For The
Western Division of The Western
District of Missouri**

JAMES M BARKLEY, ET AL., Complainants,

VS.

No. 3546

HUGH HAYES, ET AL., Defendants.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATES OF AMERICA
ET AL., Complainants,

VS.

No. 3540

MISSOURI VALLEY COLLEGE, ET AL., Defendants.

In addition to the evidence printed in Volume 1., the complainants introduced at the trial of the above causes the following evidence upon the issue of fraud raised by the complainants:

a. From the Minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, pages 43-48, as follows:

I. CONTINUATION OF DISCUSSION ON ORGANIC UNION.

1. "On motion, it was determined that the Assembly would hear one more speaker upon each side of the question in debate, and that then the vote should be taken. Elder J. H. Fussell made the closing argument for the negative, and Dr. S. M. Templeton closed for the affirmative.

"Roll Call and the Vote on Organic Union.

"On the calling of the roll, the yeas and nays having been called for, the vote on Dr. Templeton's paper offered on last forenoon (see page 30), the vote was as follows:

* * * * *

Negative: Ministers M. A. Hunt, Geo. L. Johnson, Jno. Stephens, R. F. Johnston, Allen Foust, R. W. Binkley, W. J. Williams, J. D. Lewis, P. F. Johnson, B. L. Holder—10 * * *

"On the proposition to submit and recommend the plan of Union and Reunion to the Presbyteries, 236 votes were cast, of which two-thirds, or 158 votes were necessary to carry the measure."

2. From the minutes of the General Assembly of the Cumberland Presbyterian Church, 1904, pages 70 and 71, as follows:

RESOLUTIONS OF THANKS

"The following resolution, offered by the Rev. J. W. Mitchell, was unanimously adopted by a rising vote. * * *

"Resolved, that the sincere thanks of this Assembly be extended:

* * * *

"7. To the Moderator for his fair and impartial ruling in every instance, and to the Clerks for their efficient service.

"Resolutions on Moderator's Rulings.

"The following resolution, offered by the Rev. Allen Foust, was unanimously adopted.

"Resolved, that we, the members, of the General Assembly in session at Dallas, Texas, recognize and hereby express our unqualified appreciation of the fair and impartial manner in which the Moderator presided over this body during the discussion of the Report of the Committee on Fraternity and Union. * * *

b. Stipulation No. 5.

STIPULATION

(Omitting Caption.

In addition to other stipulations herein filed, it is agreed that the matters herein set out and referred to shall, without further formality or proof, be considered and deemed as proven and true, and treated as evidence in this cause, subject, however, to any objection going to the competency or materiality thereof or to any portion thereof. This stipulation does not affect any other or former stipulation as to the evidence to be offered in this cause, but is simply in addition to matters stipulated for as evidence therein:

First. In the case of James M. Barkley, et al., Complainants vs. Hugh Hayes, et al., Defendants, James M. Barkley, complainant, was, at the time of the filing of this suit and is now, a resident and citizen of the state of Michigan, and at the time of the filing of this suit, was the Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America.

Second. William H. Roberts, complainant in the same cause, was, at the time of the filing of this suit and is now, a citizen and resident of the state of Pennsylvania and was Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America.

Third. That the Presbyterian Church in the United States of America consisted of approximately one million, three hundred thousand individuals, communicants of said church.

Fourth. In the case of The Synod of Kansas et al., Complainants vs.. Missouri Valley College, a corporation, et al., Defendants, the individual complainants, H. G. Mathis, R. Thompson, William Foulkes, J. B. Lanner, Samuel Garvin and Charles M. Iabler were residents and citizens of the state of Kansas, and members of the Synod of Kansas of the Presbyterian Church in the United States of America, and that Samuel Garvin was Moderator of said Synod for the year 1909.

ROBERT M. REYNOLDS,

Solicitor for Defendants.

VIRGIL V. HUFF,

Solicitor for Complainants.

(c) From the record of the case of Zarecor V. Provine, Supreme Court of Tennessee, as provided in section 7, stipulation No. 2, in Volume 1 of evidence, from the disposition of witness therein as follows:

1. ROBERT McFERRIN.

Q. I will ask you, Doctor, if you heard any commissioner ask any question of the moderator just before the vote was taken? A. Yes sir, there was a question as to the submission of the question to the presbyteries.

Q. Do you remember who asked the question? A. No, I do not know the man that asked me, I do not know the man that asked the question, I was sitting right beside him, but I think it was a delegate from Texas, he first turned to me and asked if a man voted for the submission of it to the Presbyteries would he be compelled to vote for it in the Presbytery, and I told him I thought not, and then he held by that vote in his presbytery?

Q. Was that Judge Pendergast? A. No sir, I know Judge Pendergast well.

Q. Was he a preacher or an elder? A. I think he was a preacher.

Q. Do you know certainly whether he was from Texas? A. No sir, I would not be positive, I never thought about it until afterwards.

Q. Now, can you give exactly the question he asked the moderator. A. He asked the moderator if he would be bound by his vote on the question, if the question came up in his presbytery.

Q. What was the moderator's reply? A. Told him that he would not.

Q. Did the moderator make any statement as to how he was going to vote on the resolution? A. He did not. He said he would vote for the submission of it even if he was opposed to it.

Q. Now did you hear anybody else ask the moderator any question upon this matter? A. I couldn't state exactly, there was a good deal of discussion on the question as to whether a man would be bound in this Presbytery by his vote in the General Assembly and it was also a question as to whether it was simply a submission or a recommendation.

Q. Who raised the question as to whether it was a submission or a recommendation? A. The opposition raised the question.

Q. Do you know what individual? A. No, I do not.

Q. Did you hear the moderator make any statement upon that subject. A. No sir.

Q. Do you know whether or not he said that it constituted merely a submission and not a recommendation? A. I never heard him say it.

2. S. D. LOGAN, OF NEW DECATUR, ALABAMA.

Q. Did you attend the sessions of said assembly. A. I did up till the evening of the close of the debate, I was not there the last two days of the Assembly.

Q. Now how did you happen to go to Dallas at that time not being a commissioner to that assembly? A. I was on my way to Talequah, Indian Territory, to preach the commencement sermon for the Cherokee Male Seminary of which my brother was president, and went by the Assembly on my way to Talequah. My visit there was incidental.

Q. Who were some of the leaders of the opposition, especially leading the campaign against the passage of the Templeton resolution? A. There was Mr. Fussell, J. M. Parker, of Dyersburg, A. N. Eshman, T. A. Harvon, W. M. Robinson and Judge Prendergast.

Q. Was or not Rev. J. W. McGee of Missouri with them? A. Yes sir.

Q. Now did you hear during any of that time of any understanding or agreement between the unionists and anti-unionists or a part of each element respectively that the vote on said Templeton Resolutions would not be taken on the night on which it was taken? A. I was in the hotel corridors the night the vote was taken and the Rev. Mr. McGee of Chattanooga came out into the corridors of the hotel with his valise and I asked him where he was going and he said he was going to Arlington to spend the night, and there were two or three with him, just who they were I do not remember. My understanding was that they were going with him and I asked him where they were going and they told me, and I remember urging them not to go, that the vote would be taken that night and they said that they didn't think it would be taken that night.

Q. Now were all of these gentlemen commissioners to the Assembly? A. I do not remember.

Q. To what extent did you urge them not to go? A. Why I just insisted that they should not go.

Q. Had you been in the Assembly during that day? A. Yes sir.

Q. Do you remember whether or not a motion was made by Col. J. H. Fussell at any time during that day or by anybody else, and carried, that the vote on the subject of organic union would not be taken until the next day? A. I do not remember any motion of that kind.

Q. From your attention to the proceedings of the Assembly that day, would you say that if such motion had been made and carried you would heard it? A. I think I would. I was out only a

short while, I was called out by a friend and was about thirty minutes out.

Q. Do you remember what time of day you were out? A. I was out just before noon.

Q. Do, you remember hearing of any impression in the minds of any other commissioner that was opposed to union that the vote would not be taken that night? A. No sir, that is the only, I was surprised that some were thinking of going away when the vote seemed imminent.

Q. Now please state whether or not in the caucuses or councils of the opponents of union any exhortations were made to them through commissioners to be sure to be present in the Assembly when said resolutions should be voted on? A. I do not remember any particular exhortation of that sort, I felt that the interest was sufficient that that was thoroughly understood by every opponent.

Q. You say, I believe, that you were not present the night the resolutions were voted on? A. I was not present at the time of the vote. My brother and myself had to leave.

Q. Do you know of any commissioner to that Assembly who was induced to remain away that night and did remain away because of any assurance that he had that the vote would not be taken that night, and thereby lost his vote? A. No sir."

3. REV. J. W. MCGEE OF HARRISONVILLE, MISSOURI

Q. Please state whether or not there was any understanding between the two sides that the vote on the Templeton resolutions would not be taken on the night on which it was taken? A. No, there was no such understanding between the two sides. We all went to the church that evening in full expectation that the debate would close and the vote would be taken that very night at the close of the debate.

Q. Please state whether or not, so far as you know, any representation was made by any unionist to any anti-unionist that the vote would not be taken on that night. A. I never heard of any such representation.

Q. Please state whether or not, if there was any such understanding, you would have known of it and if so why? A. Had there been any such understanding between the two sides I would have certainly have known about it because I was in the sessions of the Assembly, I attended every caucus of the anti-unionists and was in constant and close touch with the leaders and constantly conferring and counseling with them and knew all of their plans.

Q. Please state whether or not there was an understanding generally made known that the vote would be taken at the close of the debate, whenever it might be. A. I do not remember of anything being said about it. It is the rule in all of our church courts to vote immediately after the close of the debate, unless there is a special order to the contrary. It was taken for granted that this general rule would be followed and there was nothing said to the contrary as I remember.

Q. Were you present at the session of the Assembly on the afternoon of the day on which the vote on the Templeton resolutions

was taken at night if so, please state whether or not J. H. Fussell made a motion that the vote should not be taken until the following day, and if he did make such a motion, was it carried? A. Yes, I was present but have no recollection of any such motion. I am sure that no such motion was ever adopted.

Q. Please state whether or not on that afternoon it was commonly understood on both sides that the vote on said resolutions would be taken that night? A. It was the general opinion of that afternoon session that the vote would be taken that night.

Q. Please state what efforts were made by the anti-unionists to have all of their commissioners present that very night on which the vote was taken. A. An effort was made to have every commissioner know when the vote would be taken and get them there that night.

Q. Please state whether or not the leaders of the opposition endeavored to explain to their commissioners the effect of the pending resolutions and if so what did they say, was the effect of said resolutions. A. Yes. The effect of the pending resolutions was discussed on the floor of the Assembly in the caucus of the anti-unionists and in the lobby. Those men were told over and over again that the effect of those Templeton resolutions would be just the same as a plain recommendation. The Unionists put up the plea that they wanted to hand the whole question down to the Presbyteries and let the church settle it. Just submit it to the church, not recommend it one way or the other, but just submit it and a number of men were influenced by this talk, but they plainly told the truth that the passage of the Templeton resolutions meant a recommendation of the union a recommendation of the Union to the church.

Q. Were you present at the close of the debate on said Templeton resolutions and if so did you hear any commissioner or commissioners ask the moderator as to the effect of said resolutions? A. Yes. I was present at the close of debate and heard commissioners asking questions of moderator regarding effect of pending resolutions.

Q. If you heard any commissioners ask questions of the moderator as to the effect of the pending resolutions, please state what were their objections, and what were the replies of the moderator? A. One asked if the adoption of the resolution meant a recommendation or a mere submission of the Union question to the Presbyteries. The moderator answered by referring to the resolutions themselves and thereby dodged the direct question. Another asked if he voted for the resolutions would he be obligated or compelled to vote for the Union in his Presbytery. Moderator answered, "No, certainly not. You can vote there as you please," or words to that effect.

Q. Please state whether or not the moderator stated to any one in answer to a question from the floor that said resolutions constituted merely a submission of the question of Union to the Presbyteries and not a recommendation. A. No, the moderator did not state to anyone from the chair that the Templeton Resolutions constituted merely a submission and not a recommendation.

was taken you were present and heard a conversation between J. H. Fussell and an old man who was an anti-unionist who was not present when the vote was taken the night before, if so, please give the name of this man and relate the conversation as accurately as you can remember. A. There was such a conversation between J. H. Fussell and an old man, unknown to me; in my presence. The old Brother would have voted "no" had he been present, but he did not know they were going to vote that night and had gone to bed, J. H. Fussell told him that he was too late. Excuses did no good, and that he should have been present."

4. JAMES M. HUBBERT, PHILADELPHIA, PENNSYLVANIA.

Q. "Were you Stated Clerk of the Cumberland Presbyterian General Assembly at Dallas, Texas, in May 1904, and were you present during the debate on the Templeton Resolutions submitting the question of Union to the Presbyteries? A. I was then Stated Clerk and was present at all the debates on said resolutions.

Q. Please state whether or not, on the day on which said resolutions were voted on at night, it was moved by Col. J. H. Fussell, or anyone else, and carried, that the final vote on said resolutions should not be taken until the next day? A. The Assembly took no such action, I am very positive. The Minutes recorded no such action, and they were approved as correct in open Assembly, without a single objection.

Q. Please state whether or not the Assembly made any special order as to when the vote on said resolutions should be taken, other than it should be taken at the close of the debate? A. I did not.

Q. Was there any understanding between the unionists and anti-unionists that the vote would not be taken on this night when it was taken? A. There was not.

Q. If there had been such understanding, would you have known it? A. I think, without doubt, I should have known it. Each side had a "Steering Committee," to select the speakers and otherwise direct the debate. I know that in the "Union Steering Committee" it had been agreed that the discussion should run until the other side were perfectly ready to end it, in order to prevent its being said afterwards that any one had been "gagged" or that any advantage had been taken. I remember distinctly that the first open proposal to close the debate and take the vote from an 'anti-unionist' the Rev. W. M. Robinson, Marshall, Texas, who rose and said 'it seemed to him that the subject had been exhausted, and that the vote might as well be taken at once.' This was late in the afternoon of the day on which the vote was taken at the night session.

Q. Please give the names and addresses of the Commissioners to said Assembly who were absent when the vote on the Templeton resolutions was taken. A. The following fifteen persons according to the Assembly Minutes: Elder Geo. L. Waller, Selma, Ala.; Rev. J. W. Wilson, Pine Bluff, Ark.; Elder J. A. Shell, Brooks, Ark.; J. C. Dickenson, Manfred, Okla.; W. S. Oldham, Selkirk, Kas.; Rev. A. W. Baldrige, Pasadena, Cal.; Rev. Z. M. McGee, East Chattanooga, Tenn.; Elder J. W. Clouse, Graysville, Tenn.; Rev. T. E. Hudson, Pulaski, Tenn.; Elder James F. Turner, Algood, Tenn.; Elder

A. B. Carothers, Marcy, Tex.; Elder R. H. Alexander, Coleman, Tex.; Elder C. H. Boedecker, Bowie, Tex.; Rev. G. W. C. Self, Looneyville, Tex.; L. S. Thurman, Aledo, Tex.

Q. Do you know why any of these persons were absent A. Rev. W. S. Oldham, of Selkirk, Kan.; had "office duties" calling him home, he being at that time County Superintendent of Public Instruction. Elder G. L. Waller, Selma, Ala., had taken sick and gone home. As to the other absentees, I have no knowledge.

Q. Did you hear Rev. J. H. Russell, of Missouri, arise just before the vote was taken and ask the Moderator Judge Settle a question? If so, please repeat the question and the answer thereto? A. Some one, I know not who it was, asked the Moderator whether a commissioner's vote in the Assembly would bind him to vote the same way on the question afterward in the negative.

Q. Did Judge Settle say to the Assembly that a vote for the resolutions meant a vote to submit, and not to recommend, the basis of Union to the Presbyteries? A. He did not say it was to recommend. Such was the situation that I was closely observant on this point.

Q. Did not Judge Settle say to the Assembly that a commissioner voting for the resolutions would not thereby be bound to vote for Union in his Presbytery? A. He so declared.

Q. Did you whisper any suggestion to Judge Settle when any of such questions were asked of him? If so, what did you say to him? A. I did not then whisper any suggestion to Moderator Settle."

5. W. C. SELF, ANCHING, OKLA.

"Q. State whether or not you were present at the taking of the final vote on the Templeton Resolutions submitting the proposition for Union to the Presbyteries? A. I was not present at the taking of the final vote on the Templeton Resolutions submitting the proposition for the union to the Presbyteries.

Q. If you have said that you were not present when said resolutions were voted on please state why you were not present and how you would have voted on said resolutions if you had been present?

A. I was not present when said resolutions were voted on. The reason why I was not present is conditions at home required me to leave the Dallas Assembly, on Monday the 4th, business day of the Assembly. If I had been present I would have voted against said resolutions.

Q. State whether or not you have known or heard of any understanding or agreement between the respective sides at that Assembly that the vote on the said resolutions would not be taken on the night on which it was taken? A. I did not know or hear of any understanding or agreement between the respective sides at that Assembly that the vote on the said resolutions would not be taken on the night on which it was taken and I think not there was such understanding or agreement.

Q. Do you know of any misrepresentations or any other unfairness practiced by the Union element at the Dallas Assembly? A. I do not know of any misrepresentations or unfairness practiced by the Union element at the Dallas Assembly. So far as I could see every proceeding was regular and fairly done."

6. J. W. CLOUSE, GRAYSVILLE, TENN.

“Q. State whether or not you were a commissioner to the General Assembly of the Cumberland Presbyterian Church at Dallas, Texas, in May, 1904? A. I was a commissioner of the C. P. Church held at Dallas, Texas, in May, 1904.

Q. State whether or not were present at the taking of the final vote on the Templeton resolutions submitting the proposition for Union to the Presbyteries? A. I was not present when the vote was taken submitting the vote for Union to the Presbyteries.

Q. If you have said that you were not present when said resolutions were voted on, please state why you were not present and how you would have voted on said resolution if you had been present. A. My wife was South of Dallas, at that time visiting her sister, one of our children being sick at that time, I went to where she was that evening. If I had been present I would have of voted for the Union.

Q. State whether or not you knew or heard of any understanding or agreement between the respective sides at that Assembly that the vote on the said resolutions would not be taken on the night on which it was taken? A. I did not hear of any understanding. I heard several say probably the final vote would not be taken for several days.

Q. Do you know of any misrepresentations or any other unfairness practiced by the Union element at the Dallas Assembly? A. I do not know of any misrepresentations nor any unfairness practiced by the Union element at the Dallas Assembly.

7. T. E. HUDSON, PULASKI, TENNESSEE.

“Q. Were you commissioner to the General Assembly of the Cumberland Presbyterian Church at Dallas, Texas, in May 1904? If so, from what Presbytery? A. I was, Columbia Presbytery.

Q. Were you present or absent when the vote on the resolution offered by Rev. S. M. Templeton submitting to the Presbyteries the question of organic union between the Cumberland Presbyterian and Presbyterian Churches? A. I was absent the greater part of the time.

Q. If you have said that you were absent when said vote was taken, please just state why were you absent? A. I was not well completely worn out, and not very anxious to vote, I thought possible it was best to submit the question to the Presbyteries, believing we could easily defeat it there if we could get a full and free expression. I would under no circumstances have voted to recommend to the Presbyteries.

Q. Did any unionist represent to you that the vote would not be taken that night? If so, state his name and address? A. Did not.

Q. State whether or not you heard the debate on the Templeton resolutions, lasting several days, and if so, what was your understanding as to when the vote on said resolutions would be taken? A. The greater part of it.

Q. Do you know any commissioner to said Assembly who was

influenced to remain away from the meetings at the time the vote was taken, by any misrepresentation made by any unionist, directly or indirectly, that the vote would not be taken that night? A. I do not.

8. J. W. WILSON, PINE BLUFF, ARKANSAS.

Q. State whether or not you were a member in the Cumberland Presbyterian Church prior to May, 1906? A. Yes.

Q. State whether or not you were a commissioner to the General Assembly of the Cumberland Presbyterian Church at Dallas, Texas, in May, 1904? A. Yes.

Q. State whether or not you were present at the taking of the final vote on the Templeton resolutions submitting the proposition for Union to the Presbyteries. A. No.

Q. If you have said that you were not present when said resolutions were voted on, please state why you were not present and how you would have voted on said resolutions if you had been present. A. Had left for home, would have voted against.

Q. State whether or not you knew or heard of any understanding or agreement between the respective sides at that Assembly that the vote on said resolutions would not be taken on the night on which it was taken. A. No.

Q. Do you know of any misrepresentations or any other unfairness practiced by the Union element at the Dallas Assembly? A. No."

9. A. S. THURMAN, ALEDO, TEXAS.

"Q. If you have said you were not present when said resolutions were voted on, please state why you were not present and how you would have voted on said resolution if you had been present? A. I was called home the day before the vote was taken. I would have voted for the resolution.

Q. State whether or not you knew or heard of any understanding or agreement between the respective sides at that Assembly that the vote on the said resolutions would not be taken on the night on which it was taken? A. I neither heard nor knew of any agreement as to when the vote would be taken.

Q. Do you know of any misrepresentations or any other unfairness practiced by the Union element at the Dallas Assembly? A. I know of no unfairness or misrepresentation or caucusing of any kind at the Dallas Assembly."

10. RERAH M. McGEE, EAST CHATANOOGA, TENN

Q. If you have said that you were absent when said vote was taken, please state just why you were absent. A. Why I was absent. I had an invitation to spend that night at Arlington, Texas, late that afternoon I asked Col. Joe H. Fussell who was to make the last speech against the Templeton resolutions if the vote would be taken that night, he stated he did not believe it would be taken before 9 or 10 o'clock the following day. I went to Arlington.

Q. Did any unionist represent to you that the vote would not

be taken that night? I so, please state his name and address. A. No.

Q. State whether or not you heard the debate on the Templeton resolutions, lasting several days, and if so, what was your understanding as to when the vote on said resolutions would be taken. A. I heard part of the debate. I was not informed by the Assembly just what time the vote would be taken.

Q. Do you know any commissioner to said Assembly who was influenced to remain away from the meeting at the time the vote was taken, by any representation made by any unionist directly or indirectly, that the vote would not be taken that night? A. I do not."

11. C. H. BAEDECKER, BOWIE, TEXAS.

"Q. If you have said that you were not present when said resolutions were voted on, please state why you were not present and how you would have voted on said resolutions if you had been present? A. Called home, Would have voted for the union at that time.

Q. State whether or not you knew or heard of any understanding between the respective sides of that Assembly that the vote on the said resolutions would not be taken on the night on which it was taken. A. Was to be next day.

Q. Do you know of any misrepresentations or any other unfairness practiced by the Union element at the Dallas Assembly? A. No."

12. R. H. ALEXANDER, COLEMAN, TEXAS.

"Q. If you have said that you were absent when said vote was taken, please state just why you were absent. A. A long distance telephone message from business associates called me home.

Q. Did any unionist represent to you that the vote would not be taken that night? If so, please state his name and address? A. No.

Q. State whether or not you heard the debate on the Templeton resolutions, lasting several days, and if so, what was your understanding as to when the vote on said resolutions would be taken up? A. Yes, I listened to debate, but do not remember when a vote was expected.

1Q. Do you know of any commissioner to said Assembly who was influenced to remain away from the meeting at the time the vote was taken, by any representation made by anti-unionist directly or indirectly, that the vote was to be taken that night? A: No"

13. W. E. SETTLE, BOWLING GREEN, KENTUCKY.

"Q. Please state whether or not there was any understanding between the two sides that the vote on the Templeton resolutions should not be taken on the night on which it was taken? A. Emphatically no.

Q. Did you ever hear of any representation, direct or indirect, made by any unionist to any anti-unionist on that day the vote on said resolutions would not be taken on that night? A. No.

Q. Please state what questions were asked you as moderator by commissioners from the floor, just before the vote was taken on said resolutions as to the effect of said resolutions? A. I can recall no question asked at that time except one from a commissioner whom I did not then know, but afterwards learned was the Rev. J. A. Russell of Missouri.

Q. Please state what were your replies to such questions if they were asked you. A. My reply to the question from Rev. J. A. Russell referred to is given in my answer to interrogatory. 12.

Q. Did you ever state to any commissioner in answer to a question from the floor that the pending resolutions did not constitute a submission of the basis of Union to the Presbyteries? A. No.

Q12. Do you remember a question being asked you from the floor by Rev. J. A. Russell of Missouri as to the effect of the pending resolutions? If so, please state what was the question and what was your answer? A. The question put by J. H. Russell just before the taking of the vote upon the pending resolutions was in substance whether a commissioner voting for the adoption of the report of the committee on Union, its recommendations and accompanying resolutions, would be bound by that act not to vote for the basis of Union in his Presbytery when the action should be taken thereon in that judicatory, to which I in substance replied: That in my opinion such commissioner would not be so bound and that speaking for myself although in favor of the basis of union and intending to vote in the Assembly if I should be elected a commissioner to my presbytery, when the matter reached it for adoption or rejection, I would not hesitate to vote against the proposed union provided any sufficient cause should arise in the meantime to make the Union of the two churches inexpedient.

Q. Please state whether or not as moderator you were called upon in any other way to interpret to the Assembly the pending resolutions, if so, in what way? A. There was no other instance that I now recollect in which I was called upon as Moderator to interpret to the Assembly the report, its recommendations, or accompanying resolutions. It all seemed to be well understood by everybody and the two days debate of the matter could have left no doubt of the action proposed upon the part of the Assembly.

14. S. M. TEMPLETON, CLARKSVILLE, TEXAS

"Q. Please state your name, age, residence and occupation? A. My name is S. M. Templeton; age 55 years; residence in Clarksville, Texas; occupation minister of the gospel and pastor of a church.

Q. State whether or not you were prior to May, 1906, a minister in the Cumberland Presbyterian Church; and if so, for how long?

A. I was a minister in the Cumberland Presbyterian Church prior to 1906, for 28 years.

Q. Please state whether or not you were a commissioner to the General Assembly of the Cumberland Presbyterian Church at Dallas,

Texas, in May 1904. A. I was a commissioner to the Cumberland Presbyterian General Assembly, at Dallas, Texas, May 1904.

Q. State whether or not you are the S. M. Templeton who offered the resolutions in said Assembly, submitting to the Presbyteries the question of Organic Union with the Presbyterian Church U.S.A. A. I am the S. M. Templeton who offered the resolutions in said Assembly, submitting the question of organic union with the Presbyterian Church, U. S. A., to the Presbyteries.

Q. State what part, if any, you took in the discussion of said resolutions before the Assembly and in the management of the contest for the Union side? A. I opened and closed the debate on said debate for the Union side, and was one of the managers of the debate for that side, and was in principal charge of the management.

Q. State whether or not you were present at all sessions of said Assembly during the debate on said resolutions? A. I was present at all the sessions of said Assembly during the debate on said resolutions.

Q. State whether or not you were present at the sessions of said Assembly on Wednesday, May, 25, 1904? A. I was present at the sessions of said Assembly on Wednesday, May 25, 1904.

Q. If you have stated that you were present at all sessions of said Assembly on May 25, 1904, please state whether or not to your knowledge Col. J. H. Fussell made a motion that the vote on said resolutions be taken the next day, and if so, state whether or not said motion was carried. A. No motion was made by J. H. Fussell in the Assembly on that day, May 25, 1904, that the vote on said resolutions be taken the next day. No such motion was either put to the Assembly or carried by the Assembly.

Q. Please state whether or not you or any one else representing the Union element in said Assembly made any agreement or assurance, or entered into any understanding with the anti-union element that the vote should not be taken on the night of May, 25, 1904? A. I did not make any agreement or assurance nor enter into any understanding with the anti-union element that the vote on said resolution should not be taken on the night of May 25, 1904. Nor did any one else representing the Union element make such agreement, assurance or understanding with the Anti-Union element, so far as I had any knowledge whatever.

Q. Please state whether or not you were present and heard Rev. J. A. Russell of Missouri ask a question of Moderator; if so, please state what was the question? A. I was present and heard Rev. J. A. Russell of Missouri ask of the Moderator a question whether a vote for the resolutions be a vote for the Union to the Presbyteries, or a vote submitting the matter to the Presbyteries.

Q. Please state whether you heard Moderator, W. E. Settle, state to said J. A. Russell or any one else the effect of the resolutions by you, if carried, would be to submit to and not to recommend the basis of Union to the Presbyteries; if you did not hear such statement made by the Moderator, please state whether or not you were present and gave such attention that if it had been made you would have heard it? A. I did not hear Moderator W. E. Settle state to said J. A. Russell, or any one else, that the effect of the resolutions introduced by me, if carried, would be to submit and not to recom-

mend the basis of Union to the Presbyteries. I was present and gave such attention that if such statement had been made, I would have heard it.

Q. Please state whether or not you made the closing argument in favor of said resolutions on the night of May 25, 1904? A. I did make the closing argument in favor of said resolutions on the night of May 25, 1904.

Q. Please state in what part of the house you were during you final argument, and from that time until the roll call was completed? A. During my final argument and until the roll call was completed, I was on the pulpit platform.

Q. Please state whether or not on the night of May 25, 1904, any public statement was made by anyone that would tend to induce any opponent of Union to vote for the pending resolutions upon the theory that said resolutions constituted a mere submission and not a recommendation of the basis of union to the Presbyteries? A. On the night of May 25, 1904, there was no public statement made in the Assembly by anyone that would tend to induce any opponent of Union to vote for the pending resolutions upon the theory that said resolutions constituted a mere submission and not a recommendation of the basis of Union to the Presbyteries by the Assembly. The said resolutions were read in the Assembly by the Clerk just before the vote was taken in order that the members might know definitely what they were voting upon."

FRANK HAGERMAN
W. M. WILLIAMS,
J. A. SUDDATH,
JOHN M. GAUT
VIRGIL V. HUFF,

Solicitors for the Complainants

NUMBERS 3540 and 3546

IN THE

**District Court of The United States For The
Western Division of The Western
District of Missouri**

APRIL TERM, 1913

JAMES M. BARKLEY, ET AL., Complainants

VS.

HUGH HAYES ET AL., Defendants.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN
CHURCH IN THE UNITED STATES OF AMERICA, ET
AL., Complainants.

VS.

MISSOURI VALLEY COLLEGE, ET AL., Defendant

Containing Certain Documentary Evidence Offered by Defendant.

W. C. CALDWELL,
S. B. LADD,
R. M. REYNOLDS, and
T. B. ALLEN,
Solicitors for Defendants

88. Defendants offer in evidence from the Minutes of the General Assembly of the Presbyterian Church in the United States of America for the year of 1904, resolution adopted by said General Assembly as follows:

From Minutes General Assembly Presbyterian Church, U.S.A., 1904, as follows:

(119)

The Report on Union with the Cumberland Presbyterian Church was taken up, being Part 5 of the Report of the Committee on Church Co-operation and Union. Resolutions were moved and seconded setting forth the matters to be voted upon by the Assembly with reference to the Plan of Union. After discussion, the hour fixed for the vote having arrived, the Resolutions were adopted as follows:

Resolved, 1. That the Joint Report on Union with the Cumberland Presbyterian Church be and hereby is adopted.

Resolved, 2. That the following Basis of Union be sent down to the Presbyteries, which shall be required to meet on or before April 30, 1905, to express their approval or disapproval of the same by a direct answer in the affirmative or negative to this question:

Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, on the following basis: The Union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical Standards; and the Scripture of the Old and New Testaments shall be acknowledged as the inspired Word of God, the only infallible rule of faith and practice?

Each Presbytery shall, before the 10th of May, 1905, forward to the Stated Clerk of the Assembly a statement of its vote on the said Basis of Union.

Resolved, 3. That the Report of the vote of the Presbyteries shall be submitted by the Stated Clerk of the General Assembly meeting in 1905, and if said Assembly shall find and declare that the foregoing Basis of Union has been approved by two-thirds of the Presbyteries of this church, then the necessary steps shall be taken, if the way be clear, to complete the union with the Cumberland Presbyterian Church.

Resolved, 4. That the Assembly, in connection with this whole subject of Union with the Cumberland Presbyterian Church, places on record its judgment, that the revision of the Confession of Faith effected in 1903 has not impaired the integrity of the system of doctrine contained in the Confession and taught in Holy Scripture, but was designed to remove misapprehensions as to the proper interpretation thereof.

Resolved, 5. That in approving the Overture looking to a change in the Form of Government concerning the territorial bounds of Presbyteries and Synods, this Assembly confirms its complete freedom from prejudice against any race and from any desire or purpose to bring about a separation from our Church, or from representation in the General Assembly, of any class or race of (10) Presbyterians; but, on the other hand our purpose is to bring together in one Church members of all races and all classes.

The Report of the Special Committee on Co-operation and Union except the portion recommitted, was adopted as a whole, and is as follows:

The Committee on Church Co-operation and Union respectfully reports to the General Assembly as follows: * * *

(129) 89. Defendants offer in evidence from the Minutes of the General Assembly of the Presbyterian Church, in the United States of America, for 1905, a resolution of said Assembly as follows.

Resolved further, That the said Committee be and it is hereby authorized to confer with the Trustees of the General Assembly, if and when necessary, in order to safeguard the corporate or property rights of the Presbyterian Church in the U.S.A. upon and after

the completion of the proposed Union; and the Trustees of the General Assembly are hereby directed, if so requested to confer to comply with such request.

90. Defendants offer from the Minutes of the General Assembly of the Presbyterian Church in the United States of America for the year of 1906, from the report of the Committee on Union, the following:

Trustees of the Assembly and Corporate Rights.—Your Committee was empowered to confer with the Trustees of the General Assembly in order to safeguard the corporate or property rights of the Presbyterian Church in the U. S. A. as a whole. The Trustees referred the matter to their solicitors, and these legal gentlemen drew up an opinion which was submitted to you Committee. From this opinion we quote as follows:

"The solicitors have not been advised as to the ecclesiastical effect of the proposed Union of the Presbyterian Church and the Cumberland Church. It is a fact to be noticed, however, that these bodies were once united; they were disrupted; and they propose to unite. If the effect of this Union be that the integrity of the organization of the Presbyterian Church shall be maintained and continued, and its doctrines, tenets and beliefs, as held in the years 1903, 1904 and 1905, be adhered to, the Cumberland Church becoming an integral portion of the Presbyterian Church, or merged into that body then and in such case the property and various trusts which are held by the corporation of the Trustees of the General Assembly of the Presbyterian Church in the United States of America will not be affected or disturbed by such a Union."

The Committee have also to state that it secured upon this subject of property rights and trusts the opinions of the legal (140) counsel of all the Boards of our own Church, and that these are in its possession. The counsel of the Boards located in New York advised that particular care be taken in the framing of the resolutions completing the Reunion and Union, so as to make it clear that the Presbyterian Church in the U. S. A. would continue its existence both ecclesiastically and legally, and that the Cumberland Presbyterian Church was reunited with and incorporated into said Presbyterian Church in the U. S. A. With this exception the opinions of the counsel of the Boards were all to the effect that no legal difficulties or obstacles existed in the way of the Reunion or Union of the two Churches. Further, it has been distinctly understood in all the joint meetings of the two Committees on Union that this particular union was a Reunion; that the continued ecclesiastical and legal existence of the Presbyterian Church in the U. S. A. was and is fundamental to the Reunion, and that the reunited Church would be the Presbyterian Church in the U. S. A. which existed in 1789, 1836, 1870 and 1903. It is believed that the continued ecclesiastical and legal existence of the Presbyterian Church in the U. S. A. has been acknowledged and secured by the resolutions of the Joint Report.

The Committee desires to make the additional statement, in connection with this matter, that it is impossible to assure the reunited Church against litigation. After consultation, however, with a number of prominent lawyers, it is believed that the reunited Church

can be reasonably assured that litigation is not likely to be successful. Some legal gentlemen have questioned as to the constitutionality of the proceedings of both Churches in this whole matter of Union. Other questions affecting both Churches and their acts have been considered. To all matters submitted very careful attention was given by the Committees of both Churches, and legal opinions were secured upon all issues raised. These opinions were not of similar tenor, but the major part of them enabled the Committee to reach the conclusion that the only thing for the Churches to do is to go forward with this matter of Reunion and Union to completion. It is better for the Churches to reunite and risk litigation than to remain apart.

91. The defendants offer in evidence the second amended petition and answer thereto, in the case of James S. Turk, Plaintiff, vs. Oscar A. Mitchell, Charles Mertel and William F. Ming, Trustees of the Mount Carmel Presbyterian Church in the United States of America, et al., in the Circuit Court of Henry County, in the State of Missouri, filed at the April Term, 1908 thereof, as follows:

SECOND AMENDED PETITION (Omitting Caption)

Plaintiff for his supplemental amended petition herein, states that the defendants Oscar A. Mitchell, Charles Mertel and William F. Ming, were on or about the day of 1906, and now are the duly elected, qualified and acting trustees of the Mount Carmel Presbyterian Church in the United States of America; that the said Oscar A. Mitchell, and the defendants, Lewis Hendricks and George N. Angle, at such times were now and are the duly elected qualified and acting ruling elders of the said Mount Carmel Congregation of the Presbyterian Church in the United States of America, as aforesaid; and the defendants E. D. Johnson, J. S. Turk and William F. Ming, were and now are the former and last duly elected, qualified and acting trustees, and successors in trust of Oscar Mitchell, Christopher E. Turk and John Mullett, of what was the Mount Carmel Cumberland Presbyterian Church.

Plaintiff states that prior to the 26th day of September 1890, he was in possession and the owner in fee of the following described real estate, lying, being and situate in the County of Henry, and state of Missouri, to-wit:

One-half acre more or less within the following metes and bound commencing at a point two hundred and eight and $\frac{1}{2}$ feet due north of the southeast corner of section No. 10, in township No. 41, of Range No. 27, west of the Fifth Principal Meridian, on the east line of said section No. 10, thence north on said east line of said section No. 10, two hundred and eight and 1-3 feet, thence west two hundred and eight and 1-3 feet, thence south two hundred eight and 1-3 feet, thence east two hundred and eight and 1-3 feet to the place of beginning;

That on the 26th day of September 1890, plaintiff James G. Turk by his deed of conveyance, his wife Ann P. Turk, joining therein did convey to Oscar Mitchell, Christopher E. Turk and John Mullett,

trustees of the Mount Carmel Cumberland Presbyterian Church, of Davis Township, Henry County, Missouri, and their successors in said trust as might from time to time be duly elected by the members of the Mount Carmel Cumberland Presbyterian Church situate in Davis Township, Henry County, Missouri, according to the laws and customs of the Cumberland Presbyterian Church, the said above described real estate, to have and to hold the premises, with all and singular, the rights, privileges, appurtenances and immunities, thereunto belonging or in anywise appertaining unto said parties of the second part and their successors in said trust forever; provided that the said land shall always be used by the parties of the second part and their successors for the site and use of the Cumberland Presbyterian Church, under the laws and regulations of the said Cumberland Presbyterian Church, its Session, Presbytery, Synod and General Assembly, and if at any time it shall cease to be occupied and control by said Cumberland Presbyterian Church, then the said land shall revert to and become the property of James G. Turk, his heirs and assigns as fully as if this conveyance had not been made; which said deed was duly acknowledged, executed and delivered to said trustees for the use and benefit of said Cumberland Presbyterian Church as aforesaid, and was filed for record on October 10th, 1890, and is recorded in book . . . at page . . . of the deed records in the office of the Recorder of Deeds of Henry County, Missouri, and is in words and figures, as follows:

JAMES G. TURK,

to

WARRANTY DEED

CUMBERLAND PRESBYTERIAN CHURCH

This indenture made and entered into this 26th day of September, A. D., 1890, by and between James G. Turk and Ann P. Turk, his wife, of the county of Henry and state of Missouri, parties of the first part, and Oscar Mitchell, Christopher E. Turk and John Mullett, Trustees of the Mount Carmel Cumberland Church of Davis Township, Henry County, Missouri, and their successors in trust, Witnesseth; that the said parties of the first part in consideration of One Dollar to them in hand paid by said parties of the second part and divers other good and valuable considerations moving to said parties of the first part, do by these presents grant, bargain and sell convey and confirm unto said Christopher E. Turk, Oscar Mitchell and John Mullett and their successors forever in trust as may from time to time be duly elected by the members of the Mount Carmel Cumberland Presbyterian Church situated in Davis Township, in Henry County, Missouri, according to the laws and customs of the Cumberland Presbyterian Church the following described real estate and land lying, being and situate in the County of Henry and state of Missouri, to-wit:

One-half acre, more or less, within the following metes and bounds commencing at a point two hundred and eight and $\frac{1}{2}$ feet due north of the southeast corner of section number Ten (10), in Township No. 41, range twenty-seven, West of the 5th Principal Meridian on the East line of the said section ten (10), thence north on said east line

of said section, two hundred and eight and 1-3 feet, thence west two hundred and eight and one-third feet, thence south two hundred and eight and 1-3 feet, thence east two hundred and eight and 1-3 feet to the place of beginning.

To have and to hold the premises aforesaid with all and singular the rights, privileges, appurtenances and immunities thereunto belonging or in anywise appertaining unto the said parties of the second part and their successors in said trust forever, providid the said land shall always be used by said parties of the second part and their successors for the site and use of a Cumberland Presbyterian Church under the laws and regulations of said Cumberland Presbyterian Church, its session, Presbytery, Synod, and General Assembly, and if at any time it shall cease to be occupied, and controlled by the said Cumberland Presbyterian Church, then the said land shall revert to and become the property of James Turk, his heirs, and assigns as fully as if this conveyance had not been made. The said James Turk hereby covenants that he is seized and indefeasible estate, in fee, in the premises herein conveyed, that he hath good right to convey the same; that said premises are free of any encumbrances done or suffered by him; that he will warrant, and defend the title to said land against the lawful claims of all persons whomsoever.

In witness whereof we have hereunto set our hands and seals this 26th day of September, A. D. 1890.

J. G. TURK (SEAL)

A. P. TURK (SEAL)

State of Missouri,))SS.
County of Henry,)

Before me personally appeared James G. Turk and Ann P. Turk, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in Clinton, Henry County, Missouri, the day and year above written. My term as notary public will expire 25th day of September 1891.
(L. S.)

WALTER E. OWEN

Notary Public, Henry County, Missouri.

Filed for record October 10th, 1890, at 4:25 o'clock, p. m.

W. H. ALLISON, Recorder.

Plaintiff further states that thereafter a church building was erected on said land by the members of the Mount Carmel Cumberland Presbyterian Church, and said land and church building erected thereon were used, occupied and controlled by the said Mount Carmel Congregation of the Cumberland Presbyterian Church, as and for its place of worship and church house, continuously thereafter, till on or about the . . . day of . . . 1907, when the said land conveyed as aforesaid and the church building erected thereon ceased to be occupied, used and controlled by the Cumberland Presbyterian Church, as in said deed of conveyance provided, and the same was wrongfully taken possession of by the defendants, Oscar Mitchell, Charles Mertel, William F. Ming, Louis Hendricks and George N. Angle, trustees and elders of the Mount Carmel Presbyterian Church in the United States of America, as aforesaid, and by them wrongfully turned over to the congregation of the Presbyterian Church in the United States of America, and that said land and church are now wrongfully occupied, held and controlled by said defendants in their representative capacity as trustees and elders of the Mount Carmel Presbyterian Church in the United States of America, and that said defendants and the said congregation of the said Presbyterian Church claim title to and the right to control and the use of said property and the right to hold and occupy the same as trustees, elders and members of the said congregation for the Presbyterian Church in the United States as aforesaid.

Plaintiff further states that defendants, Oscar Mitchell, Charles Mertel and William F. Ming, claim to be the true legal successors of the trustees named in said deed of conveyance, and as such claim to hold the legal title to said property; and that the said Oscar Mitchell, Lewis, Hendricks and George N. Angle, are the elders of said Presbyterian congregation, and as such, claim to have the right to manage and control said church and the said property to the exclusion of and against the officers and members of the Mount Carmel Cumberland Presbyterian Church, as aforesaid, and claim to have actual and exclusive possession thereof as the officers and representatives of the Presbyterian congregation aforesaid, and claim to hold said property for said Presbyterian congregation and for the Presbyterian Church in the United States of America.

Plaintiff further states that said premises are no longer used and occupied by the Mount Carmel congregation of the Cumberland Presbyterian Church as their place of worship under the laws and regulations of the said Cumberland Presbyterian Church its Session, Presbytery, Synod, and General Assembly, and that the same has ceased to be occupied and controlled by the officers and members of the said Cumberland Presbyterian Church as such, but that said defendants and their associates, against the will and protest of a large number of the membership of said Mount Carmel Cumberland Presbyterian Church, took exclusive possession of said premises, and continue to hold and control the same, in violation of the express conditions and provisions of said deed of conveyance and against the will of the membership of the said congregation and have ousted the membership of the said congregation of the Cumberland Presbyterian Church and their officers in charge, and have deprived and prevented them from exercising any control.

over said property for the use and benefit of said Mount Carmel congregation of the Cumberland Presbyterian Church; and that the same is not now being used and enjoyed for the use and benefit of the said Mount Carmel Cumberland Presbyterian Church, under the laws and regulations of the Cumberland Presbyterian Church, its Session, Presbytery, Synod and General Assembly and that said property has ceased to be used, occupied and controlled by the membership of the Mount Carmel Cumberland Presbyterian Church as aforesaid.

Plaintiff further states that by reason of the premises aforesaid there is a diversion of the trust created in and by said deed of conveyance and the title and right to the use and control of said premises has reverted to and vested in the plaintiff, that the said deed of conveyance as aforesaid is a cloud on plaintiff's title thereto, and that the plaintiff is entitled to full and immediate possession thereof and to have said deed of conveyance declared null and void and for naught held.

Wherefore plaintiff prays the court for judgment, order and decree declaring a forfeiture of all right, title and interest in said property as to the defendants herein, and that said land and all title thereto and all improvements thereon and appurtenances thereto belonging have reverted to and vested in plaintiff, and that the defendants and each of them be divested of all right, title, or interest whatever therein; that said deed of conveyance be set aside and for naught held; and that the plaintiff be declared the owner in fee of said premises, and for all proper orders, judgments and decrees in the premises.

Plaintiff for another and further cause of action against the defendants by reason of the facts set forth in the first count of this petition, which facts and statements therein set forth are adopted and made a part of this count, says that the plaintiff is the owner in fee of the real estate therein set forth and described.

And further states that said defendants claiming some interest by reason of being trustees and elders as aforesaid have no further or present interest or title in said real estate, and plaintiff says that the title to said real estate has reverted to and is now vested in him; but that said defendants assert some claim or title of record adverse to plaintiff; and plaintiff says that he is entitled to have the title to said land and property, all improvements thereon and appurtenances thereto, and all interest therein, ascertained, defined and determined, and all title and interest divested out of defendants and vested in plaintiff.

Wherefore plaintiff prays that the title to and all interest in said land and property be ascertained, defined and determined by decree of court, as between plaintiff and defendants, and that defendants be divested of all right, title, interest and estate in and to said real estate, and that title thereto, be perfected and vested in plaintiff and for all proper orders, judgments and decrees in the premises and for costs.

C. C. DICKINSON,
PEYTON A. PARKS,
and JAS. A. KEMPER,
Attorneys for Plaintiff.

Answer of Oscar A. Mitchell et al., to 2nd Amended Petition.

— ANSWER TO SECOND AMENDED PETITION. —

(Omitting Caption)

Now comes defendants Oscar A. Mitchell, Charles Mertel and Wm. F. Ming, trustees of the Mt. Carmel Presbyterian Church in the United States of America, and Oscar A. Mitchell, Lewis Hendricks and George N. Angle, elders of the Mt. Carmel Presbyterian Church in the United States of America, for their joint and separate answer to the first count of plaintiff's 2nd amended petition or supplemental petition, admit that the defendants Oscar A. Mitchell, Charles Mertel and Wm. F. Ming were on the day of 1906, and now are the duly elected and qualified and acting trustees of the Mt. Carmel Presbyterian Church in the United States of America. That said Oscar A. Mitchell and the defendants Lewis Hendricks and George N. Angle, at such times were and now are the only elected, qualified and acting and ruling elders of the said Mt. Carmel Congregation of the Presbyterian Church in the United States of America. Admit that prior to the 26th day of September 1890, the plaintiff was in possession and the owner in fee of the real estate described in his petition. Admit that on the 26th day of September, 1890, the plaintiff James G. Turk, by deed of conveyance with his wife joining therein conveyed to Oscar A. Mitchell, Christopher Turk and Jno. Mullett, trustees of the Mt. Carmel Cumberland Presbyterian Church, of Davis Township, Henry County, Missouri, and their successors in trust, the land described in plaintiff's petition, by the deed as set out in plaintiffs's petition. Admit that thereafter a church building was erected on said land by the members of the Mt. Carmel Cumberland Presbyterian Church, and that said land and church building erected thereon, were used, occupied and controlled by the Mt. Carmel congregation of the Cumberland Presbyterian Church as and for its place of worship, and church house continuously thereafter;

Deny that said lands conveyed as aforesaid and the said church building erected thereon was wrongfully taken possession of by the defendants, Oscar A. Mitchell, Chas. Mertel and Wm. F. Ming, Lewis Hendricks and George N. Angle, as trustees and elders of the Mt. Carmel Presbyterian Church in the United States of America, and wrongfully turned over to the Presbyterian Church in the United States of America;

Deny that said land and church are now wrongfully occupied, held and controlled by said defendants in their representative capacity as trustees and elders of the Mt. Carmel Presbyterian Church in the United States of America.

Admit that said defendants and the congregation of the Presbyterian church, which they represent, claim title to and the right to the control and the use of the said property, and the right to hold and occupy the same as trustees and elders and members of the said congregation of the Presbyterian Church in the United States of America as aforesaid

Admit that the defendants Oscar A Mitchell, Charles Merte and Wm. F. Ming claim to be the true and legal successors of the trustees named in said deed of conveyance, and as such claim to hold the legal title to said property;

Admit that the said Oscar Mitchell, Lewis Hendirck and George N. Angle, are the elders of the said Presbyterian Congregation and as such claim to have the right to manage and control said church and the property to the exclusion of and against the officers and members of what now claims to be the Mt. Carmel Cumberland Presbyterian Church and claim to have the right to the actual and exclusive possession thereof, as officers and representatives of the Presbyterian Church as aforesaid, and claim to hold said property for said Presbyterian Congregation for the Presbyterian Church in the United States of America;

Defendants deny that said premises are no longer used, and occupied by the Mt. Carmel congregation of the Cumberland Presbyterian Church, as their place of worship under the Law and Regulations of the Cumberland Presbyterian Church, its Sessions, Presbyteries, Synods, and General Assemblies;

Deny that the same has ceased to be occupied and controlled by the officers and members of the said Cumberland Presbyterian Church as such;

Deny that the defendants and their associates against the will and protest of a large number of the membership of the said Mt. Carmel Cumberland Presbyterian Church, took the exclusive possession of the said premises, and continued to hold and control same in violation of the expressed conditions and provisions of the said deed of conveyance, and against the will of the membership of the said congregation, and ousted the membership of the said congregation of the Cumberland Presbyterian Church, and their officers in charge.

And deny that they have deprived and prevented them from exercising any control over said property for the use and benefit of the Mt. Carmel Congregation of the Cumberland Presbyterian Church;

Deny that the same is not now being used and enjoyed for the use and benefit of the Mt. Carmel Cumberland Presbyterian Church under the laws and regulations of the Cumberland Presbyterian Church, its sessions, presbyteries, Synods and General Assemblies;

Deny that said property has ceased to be used, occupied and controlled by the membership of the Cumberland Presbyterian Church as follows:

Deny that by reason of the premises, aforesaid, or by any other reason there has ever been a diversion from the trust created in and by reason of the said conveyance, and the title to use and control of the premises, has reverted to and vested in the plaintiff;

Deny that the said deed is a cloud on plaintiff's title thereto;

Deny that plaintiff is entitled to a full and immediate possession of the said premises;

And deny that he is entitled to have said deed of conveyance declared null and void.

Further answering defendants state the facts to be; That the Presbyterian Church in the United States of America, was long

prior to the year 1810, a voluntary, unincorporated, religious association, with a representative form of government, consisting of Sessions, Presbyteries, Synods and General Assemblies. The session having complete control of all matters pertaining to the congregation. The Session was composed of the minister in charge, and two or more ruling elders, and have control of everything pertaining to the congregation. The Presbytery is composed of all the ministers of a given number of congregations and territory, together with one ruling elder from each congregation, constituting the next higher court, and the Synod is composed of three or more Presbyteries, and is an intermediate court between the Presbytery and the General Assembly. That the General Assembly is the highest church judicatory, and possesses judicial, legislature and executive powers, and also original and appellate jurisdiction of all matters touching the government, faith and interest of the church. That said church government is ruled by a regular system of Laws and Constitution known as the Confession of Faith. That this system is known as the Presbyterian System.

That about the year 1810 the Cumberland Presbyterian Church was organized as a branch or off-shoot of the Presbyterian Church in the United States of America, and has the same form of Government with the same courts and judicatories, each having the same powers and exercising the same jurisdiction.

In 1903 such action was taken by the General Assemblies of each of the said churches, that a committee on Union, who should submit a plan of union and re-union was appointed. That said Committee reported to the General Assemblies in 1904, a plan that was adopted, by the General Assemblies of each of said churches. That said plan after its adoption was submitted to the Presbyteries of each of the said churches for approval or rejection. That said plan was approved by the majority of the Presbyteries of each of the said churches, throughout the United States, and said approval reported to the General Assemblies for each of said churches, meeting in the year 1905; that said reports were examined, approved and affirmed by the General Assemblies, of each of said churches, and the Union declared to have been adopted, and now exist, and the Committees on Union were further enlarged, and directed to work out the details for the final consummation, and report to the General Assemblies of each of said Churches in 1906. That said Committees did so report and their reports were approved and the Union and Reunion of the two churches were declared by the General Assemblies of each of the said two churches to be finally, completely and fully consummated, for the Union and Re-union and the reunited church should be known as the Presbyterian Church of the United States of America, and should embody and incorporate what was the Presbyterian Church in the United States of America, and what was the Cumberland Presbyterian Church in one body. And after said consummation, the General Assembly of what was the Cumberland Presbyterian Church, adjourned sine die, and since that date the Presbyterian Church in the United States of America is the legal successor of what was the Cumberland Presbyterian Church. That this congregation in question is now the Mt. Carmel Congregation of the Presbyterian Church

in the United States of America, and as such is the legal successor of what was the Mt. Carmel congregation of the Cumberland Presbyterian Church and is composed of the same identical persons who were members of what was the Mt. Carmel congregation of the Cumberland Presbyterian Church, and that these defendants were the elders and trustees of the Mt. Carmel congregation of the Presbyterian Church in the United States of America, and as such are the legal successors of the Mt. Carmel congregation of the Cumberland Presbyterian Church, and as such are entitled to hold and occupy and use said property to the exclusion of all other persons whomsoever. But these defendants further state that a small minority of what was the Cumberland Presbyterian Church have illegally and against the laws and decisions of the Church, organization and church judicatory still continue to claim to be the Cumberland Presbyterian Church, and still claim to be members of the Mt. Carmel congregation of the Cumberland Presbyterian Church, and still endeavor to hold services under said name. That these defendants while denying that they have any right so to do, have still permitted them at all times without any let or hindrance, to hold any and all church services that they desired, and at anytime they desired, in said building in question, and as further answer deny each and every allegation in said petition contained not hereinbefore specifically admitted;

Wherefore having fully answered defendants pray to be allowed to go hence without day, and recover of plaintiff their costs in this behalf expended, and that the first count of plaintiff's bill be dismissed for want of any equity therein.

These defendants for their answer to the second count in plaintiff's said second amended petition, hereby adopt all the allegations, averments and recitals hereinbefore set out, as an answer to the first count of said petition.

Wherefore having fully answered, defendants pray that the title to and all interest in said land and property be ascertained, defined and determined by decree of this court, and be decreed to be vested absolutely and unconditionally in accordance with the terms of the said deed in these defendants, as the trustees and elders of the Presbyterian Church in the United States of America, as the legal successors to the trustees named in said deed, subject only to the condition named in said deed, and for their costs in this behalf expended.

J. W. SUDDATH,
W. E. OWEN,
Attorneys for Defendants.

Answer and Intervening Bill of E. D. Johnson, et al
(Omitting Caption)

Come now E. D. Johnson and J. S. Turk as trustees of the Mount Carmel Cumberland Presbyterian Church, and also as Elders of the Mount Carmel Cumberland Presbyterian Church, and for their ans-

wer and intervening bill in this cause, admit that the plaintiff prior to the 26th day of September 1890 was in possession and owner in fee simple of the real estate described in pleadings in this cause;

Admit that on the 26th day of September 1890 plaintiff by his deed of conveyances, set forth in full in the pleadings in this cause, his wife, Ann P. Turk, joining therein, did convey to Oscar Mitchell, Christopher E. Turk and John Mullett, trustees of the Mount Carmel Cumberland Presbyterian Church of Davis Township, Henry County, Missouri, and their successors in said trust, as might from time to time be duly elected by the members of the Mount Carmel Cumberland Presbyterian Church situate in said Davis Township, Henry County, Missouri, according to the laws and customs of the Cumberland Presbyterian Church, said real estate, to have and to hold said premises, with all and singular, the rights, privileges, appurtenances and immunities thereto belonging or otherwise appertaining, unto said party of the second part, and their successors in trust forever, providing that said land shall always be used by parties of second part and their successors for the site and use of the Cumberland Presbyterian Church under the laws and regulations of the said Cumberland Presbyterian Church, its Session, Presbytery, Synod and General Assembly, and if at any time it shall cease to be occupied and controlled by said Mount Carmel Cumberland Church then said real estate shall revert to and become the property of James G. Turk, his heirs and assigns forever, as fully as if this transfer had not been made.

Admit that said deed was duly acknowledged, made, executed and delivered to said trustees for the use and benefit of the Mount Carmel Cumberland Presbyterian Church aforesaid, and was filed for record October 10th, 1890, and duly recorded in the office of the Recorder of Deeds of Henry County, Missouri, and same is in words and figures as set forth in plaintiff's petition in this cause.

These defendants further admit that thereafter a church building was erected on said land by the members of the Mount Carmel Cumberland Presbyterian Church and said land and church building erected thereon were used and occupied and controlled by the Mount Carmel Cumberland Presbyterian Church as its place of worship and church house, continuously thereafter until on or about the . . . day of 1907.

Admit that about that date said land and church building were wrongfully taken possession of by the defendants Oscar Mitchell, W. F. Ming, Charles Mertel, George N. Angle and Lewis Hendrick, as trustees and elders of the Mount Carmel Presbyterian Church, as aforesaid, and by them wrongfully turned over to the congregation of the Mount Carmel Presbyterian Church in the United States of America, and that said land and church are now wrongfully occupied, held and controlled by said defendants in their representative capacity as trustees and elders of the Mount Carmel Presbyterian Church; that said defendants and said congregation of said Mount Carmel Presbyterian Church claim title to and right of control and use of said property, and the right to hold and occupy same as trustees and members of said congregation for said Mount Carmel Presbyterian Church in the United States of America, as aforesaid.

These defendants further admit that the defendants, Oscar Mitchell, Charles Mertel and William F. Ming claim to be trustees and legally successors of trustees named in deed of conveyance; and as such claim to hold property, and that Oscar Mitchell, Lewis Hendrick and George N. Angle as Elders of said congregation and as such claim to have the right and control of said property and church to the exclusion of the membership of the Mount Carmel Cumberland Presbyterian Church, congregation to hold said property for said congregation of the said Mount Carmel Presbyterian Church in the United States of America.

But these defendants deny each and every other allegation contained in plaintiff's petition and for their answer to the answer of the other defendants in this cause these defendants deny that said Oscar A. Mitchell, Charles Mertel and William F. Ming are the true and legal successors of the trustees named in said deed of conveyance and deny that they have any interest in said property as such trustees and on the contrary aver that these defendants E. D. Johnson and J. S. Turk are the successors in trust in said conveyance for the Mount Carmel Cumberland Presbyterian Church in accordance with the terms and provisions of said deed.

And these defendants further deny that the said Oscar A. Mitchell, Lewis Hendrick and George N. Angle as Elders of said congregation have the right to manage and control said church and property and deny that the said Mount Carmel Presbyterian Church has any interest in said property, and on the contrary aver that these defendants as trustees and elders of the Mount Carmel Cumberland Presbyterian Church have the right to manage and control said church and property to the exclusion of the officers and members of the Mount Carmel Presbyterian Church in the United States of America,

These defendants aver that the title to said property was conveyed to said trustees in said deed and their successors in trust for the use and benefit of the Mount Carmel Cumberland Presbyterian Church, their successors in trust, whoever they may be for the use and benefit of the congregation of the Mount Carmel Cumberland Presbyterian Church as aforesaid.

Defendants deny each and every other allegation contained in petition of plaintiff, as well as in the separate answer of co-defendants in this cause not hereinbefore specifically admitted.

Wherefore these defendants pray that the title to said property be defined, ascertained and determined to be in these defendants, as trustees of the Mount Carmel Cumberland Presbyterian Church, and that the court by its decree define, ascertain, and determine that the remaining defendants have no interest or title in said property and that plaintiff has no interest in property and for all proper orders and decree and these defendants will ever pray.

JAMES D. LINDSAY,
Attorney for E. D. Johnson and J. S. Turk, as
Elders and Trustees.

Answer of Oscar Mitchel et al., to Cross-bill.
(Omitting Caption)

Comes Oscar Mitchell, Chas. Mertel, Wm. F. Ming, Lewis Hendrick and G. N. Angle, and for their answer to the intervening bill of their co-defendants, E. D. Johnson and J. S. Turk, deny each and every allegation of new matter in said intervening petition contained, and deny that their co-defendants are entitled to the relief therein prayed for, and as against their said co-defendants pray again for the relief asked for in their answer herein filed.

J. W. SUDDATH,
W. E. OWEN,
Attys. for above named defts.

Separate Answer of Wm. F. Ming
(Omitting Caption)

Now comes defendant William F. Ming, late trustee of what was the Mount Carmel Cumberland Presbyterian Church, and enters his appearance and adopts as his joint and separate answer the answer of Oscar A. Mitchell, Chas. Mertel and Wm. F. Ming, Trustees, and Oscar A. Mitchell, Lewis Hendricks and Geo. N. Angle, Elders of the Mount Carmel Presbyterian Church in the United States of America, and joins in the prayer therein made.

W. E. OWEN and
J. W. SUDDATH,
Attys. for Deft. Wm. F. Ming, late Trustee of what was the Cumberland Presbyterian Church.

Reply.
(Omitting Caption)

For reply to the answer of the defendants in this cause, both joint and separate, plaintiff denies each allegation of new matter therein contained.

J. A. KEMPER,
DICKINSON & SON, and
PARKS & SON, for Plaintiff.

92. The defendants offer in evidence the final judgment and decree of the said Circuit Court of Henry County, Missouri in said cause, entered on the 5th day of November, 1909, as follows:

(Omitting Caption)

Now at this day this cause coming on for decision by the court having been taken under consideration and advisement by the court upon trial until this date come the respective parties to this suit by their respective attorneys and the court having fully considered the premises and matters all and singular involved in this litigation doth find from the evidence that the plaintiff James G. Turk was at the date of the conveyance hereinafter described the owner in fee

simple and in possession of the following described real estate situate in Henry County, Missouri, to-wit:

One-half acre more or less within the following metes and bounds, commencing at a point two hundred and eight and one-third feet due north of the southeast corner of section ten, township forty-one, range twenty-seven, on the east line of said section, two hundred eight and one-third feet, thence west two hundred and eight and one-third feet, thence south two hundred and eight and one-third feet, thence east two hundred and eight and one-third feet, to the place of beginning;

That on the 26th day of September, 1890, the plaintiff, together with his wife did make the conveyance described in plaintiff's petition to Oscar A. Mitchell, Christopher E. Turk and John Mullett, as trustees of the Mount Carmel Cumberland Presbyterian Church of Davis Township, Henry County, Missouri, and their successors in said trust as might from time to time be duly elected by the Mount Carmel Cumberland Presbyterian Church situate in Davis Township, Henry County, Missouri, according to the laws and customs of the Cumberland Presbyterian Church provided said land should always be used by the parties of the second part and their successors for the site and use of the Cumberland Presbyterian Church under the laws and regulations of the Cumberland Presbyterian Church, its Sessions, Presbytery, Synod and General Assembly, and if at any time it shall cease to be occupied and controlled by said Cumberland Presbyterian Church than the said land shall revert to and become the property of James G. Turk, his heirs and assigns the same as if said conveyance had not been made.

The court further finds from the evidence that some time thereafter a church building was erected on said land by the members of the Mount Carmel Cumberland Presbyterian Church.

The court further finds from the evidence that prior to the institution of this suit and some time prior to the year 1906 there was a Union attempted to be made by the congregation of said Mount Carmel Presbyterian Church with the Presbyterian Church of the United States of America, but that said Union was void after said attempted Union and some time prior to the year 1906, the land and church building above described were taken possession of by the defendant Oscar A. Mitchell, Charles Mertel and Wm. F. Ming, as trustees of the Mount Carmel Presbyterian Church and Lewis Hendricks, Oscar A. Mitchell and George N. Angle, as Elders of the Mount Carmel Presbyterian Church of United States of America, and that said defendants have since that time retained possession of said property and are claiming the same as their property for the use and benefit of the members of the congregations of the Mount Carmel Presbyterian Church of the United States of America.

The court further finds from the evidence that the defendants E. D. Johnson and J. S. Turk are trustees of the Mount Carmel Cumberland Presbyterian Church of Davis Township, Henry County, Missouri, and as such successors in trust to Oscar A. Mitchell, Christopher E. Turk, and John Mullett, mentioned in said deed to said property from the plaintiff and that they are elders of said Mount Carmel Cumberland Presbyterian Church, and as such are entitled

to said property for the use and benefit of the members of the congregation of the said Mount Carmel Cumberland Presbyterian Church who were loyal to the tenets and organization of said Cumberland Presbyterian Church, to have and to hold, enjoy and use said property in accordance with the provisions of the foregoing recited deed; that is to say provided that said land shall always be used by said trustees and their successors in trust for the site and use of the Cumberland Presbyterian Church under the laws and regulations of said Cumberland Presbyterian Church, its Session, Presbytery, Synod and General Assembly, and if at any time it should cease to be occupied by the Cumberland Presbyterian Church then said land shall revert to and become the property of James G. Turk, his heirs and assigns, the same as if the said conveyance had not been made.

It is therefore considered, ordered and decreed by the court as follows that the title to said property be and the same is hereby declared to be held in trust by the said E. D. Johnson and J. S. Turk as trustees of the said Mount Carmel Cumberland Presbyterian Church for the use and benefit of the members of said congregation who are loyal to the faith and organization of said church and that they have and recover of defendants Oscar A. Mitchell, Charles Mertel and William F. Ming trustees of the Mount Carmel Presbyterian Church of the United States of America, and Oscar A. Mitchell, Lewis Hendricks and George N. Angle, as elders of the Mount Carmel Presbyterian Church, costs in this cause laid out and expended, and that they have execution therefor.

93. The defendants offer in evidence from the Confession of Faith of the Cumberland Presbyterian Church, adopted in the year of 1829, and in force until 1883, the following concerning the power of the General Assembly.

Sec. IV. The General Assembly shall admit and judge of the appeals regularly brought before them from the inferior judicatories; give their judgment on all references of ecclesiastical cases made to them; review the synodical books, redress whatever has been done by the synods contrary to order; take effectual care that synods observe the constitution of the Church; make such regulations for the benefit of the whole body, and of the Synods, Presbyteries, and churches under their care, as shall be agreeable to the word of God and the constitutions of the church.

VL. To the Assembly also belongs the power of consulting reasoning and judging in all controversies respecting doctrine and discipline; of reproof, warning, or bearing testimony against error, in doctrine or immorality; in practice in any church, Presbytery or Synod; of corresponding with other churches; of putting a stop to schismatical contentions and disputations; and in general of recommending and attempting reformations of manners, and of promoting charity, truth and holiness through all the churches, and of altering, dissolving and creating new synods, when they judge it necessary.

94. Defendants offer from said Confession of 1829, the following concerning Church Government.

It is absolutely necessary that the government of the church be

exercised under some certain and definite form; and we hold it to be expedient, and agreeable to scripture and the practice of the primitive Christians, that the church be governed by congregational, presbyterial and synodical assemblies. In full consistency with this belief we embrace, in the spirit of charity, those christians who differ from us in opinion or in practice on these subjects.

Respectfully submitted,

W. C. CALDWELL,

S. B. LADD,

R. M. REYNOLDS,

T. B. ALLEN,

Solicitors for Defendants.

667 (Order overruling Pleas and Demurrers to Bill of Complaint, filed and entered July 16, 1912.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

The Synod of Kansas of the Presbyterian Church et al, Complainants,

vs. No 3540 C. C.

Missouri Valley College, J. W. Duvall et al, Defendants.

Now at this day this cause coming on for further hearing and the question of the sufficiency of the pleas and demurrers to the complainants' bill of complaint and the amendment thereto, having heretofore been argued by counsel and submitted to and taken under advisement by the Court, and the court having now fully considered the same, it is ordered and adjudged that each and all of said pleas and demurrers be and the same are hereby overruled. To which said order and judgment of the court upon each of said pleas and each of said demurrers, the defendants filing the same, respectively, do severally except.

It is further ordered by the court that those defendants represented by W. C. Caldwell, Robert M. Reynolds, Thomas B. Allen and Sanford B. Ladd, or by either of them, have and they are now granted leave to file their answers to said bill of complaint as amended on or before the 7th day of October, 1912.

And it is further ordered that they may, if they so choose set up in their said answers the same or similar matters and things pleaded in their said demurrers and pleas.

Dated July 16, 1912.

ARBA S. VAN VALKENBURGH,
Judge.

68 (Replication in College Case, No. 3540, filed in the District Court on October 16, 1912.)

The Replications of the above named complainants to the point and several answers of J. W. Duvall and the other defendants therein, filed October 11, 1912.

These replicants, saving and reserving to themselves all and all manner of advantages of exception which may be had

or taken to the manifold errors, uncertainties and insufficiencies of the answers of the defendants, for replication thereunto saith that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive and insufficient in law to be replied unto by these replicants; without that, that any other matter or thing in said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true; and which matters and things these replicants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

FRANK HAGERMAN,
Solicitor for Complainants

669 (Stipulation of Additional Facts, filed in the District Court on June 2, 1913.)

James M. Barkley, et al., Complainants,
No. 3546. vs.
Hugh Hayes, et al., Defendants.

The Synod of Kansas of the Presbyterian Church in the
United States of America, et al., Complainants,
vs.

Missouri Valley College, et al., Defendants.

Stipulation.

In addition to other stipulations herein filed, it is agreed that the matters herein set out and referred to shall, without further formality and proof, be considered and deemed as proven and true, and treated as evidence in this cause, subject however, to any objections going to the competency or materiality thereof or to any portion thereof. This stipulation does not [effect] any other or former stipulations as to the evidence to be offered in this cause, but is simply in addition to matters stipulated for as evidence therein.

First. In the case of James M. Barkley, et al., Complainants vs. Hugh Hayes, et al., Defendants, James M. Barkley Complainant, was, at the time of the filing of this suit as is now, a resident and citizen of the State of Michigan, and at the time of the filing of this suit, was the Moderator of the General Assembly and Chairman of the Executive Comm

sion of the General Assembly of the Presbyterian Church of the United States of America.

670 Second. William H. Roberts, complainant in the same cause, was, at the time of the filing of this suit and is now, a citizen and resident of the State of Pennsylvania and was Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America.

Third. That the Presbyterian Church in the United States of America consisted of approximately one million, three hundred thousand individuals, communicants of said church.

Fourth. In the case of the Synod of Kansas, et al., Complainants vs. Missouri Valley College, a corporation, et al., defendants, the individual complainants H. G. Mathis, R. Thompson, William Foukles, J. B. Larimer, Samuel Garvin, and Charles M. Pabler were residents and citizens of the State of Kansas, and members of the Synod of Kansas of the Presbyterian Church in the United States of America, and that Samuel Garvin was Moderator of said Synod for the year 1909.

ROBERT M. REYNOLDS,
Solicitor for Defendants.
VIRGIL V. HUFF,
Solicitor for Complainants.

671 (Stipulation of Facts, filed in the District Court on June 2, 1913.)

The Synod of Kansas of the Presbyterian Church in the United States of America, et al., Complainants,
No. 3540. vs.

Missouri Valley College, a Corporation, et al., Defendants.
Stipulation.

It is hereby stipulated and agreed that from the appointment of the First Board of Trustees of Missouri Valley College, in 1888, by the Synods of Missouri and of Kansas of the Cumberland Presbyterian Church, annual reports were made by said Board of Trustees, regularly, to the annual sessions of each of said Synods, down until and including the year 1905, of the condition, prospects, and necessities and wants of said college, showing the number and positions of the faculty, the number, age, sex, advancement, time of attendance of pupils for the Collegiate year last passed, and also a particular and detailed statement of all monies received, from

whom and on what account, with a like statement of all disbursements, also a particular statement and account of the investment of said endowment fund, and of each and every fund under its control, with the proceeds and incomes of each

That since said year of 1905, said Board of Trustees have not made said reports to the body claimed by defendants to be the Synods of Missouri of the Cumberland Presbyterian Church, but have made said reports annually to the Synods of Missouri and of Kansas of the Presbyterian Church in the United States of America, claimed by complainants to be the Synods of the United Church.

That from the incorporation of said college in 1888, the said Synods of Missouri and Kansas of the Cumberland Presbyterian Church, respectfully received and passed upon said reports, and regularly elected members to said Boards to fill vacancies [occur-ing] thereon, and regularly elected members thereto to fill the places of members whose terms expired, down until and including the year 1905.

VIRGIL V. HUFF,
Solicitor for Complainant
RICHARD M. REYNOLDS,
Solicitor for Defendants

(Stipulation of additional Facts, filed in the District Court on June 2, 1913.)

The Synod of Kansas of the Presbyterian Church in the United States of America, et al., Complainants.

No. 3540. vs.

Missouri Valley College, a corporation, et al., Defendants

Stipulation.

It is hereby stipulated and agreed for the purposes of this trial:—

That there are persons alleged in the answer to be necessary and [indispensible] parties to this action, who are not made parties to the same, to-wit:—E. D. Pearson, W. F. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell.

673 That at the time of filing this suit and the answer herein such persons claimed to be legal members of the Board of Trustees of Missouri Valley College.

That all of said parties on the 25th day of May, 1906, were lawful members of such Board, having been elected as such by the Synod of Missouri of the Cumberland Presbyterian Church.

That the Synod of Missouri of the Presbyterian Church in the United States of America, in October 1906, elected E. D. Pearson, John C. Cobb, W. T. Baird, and W. P. Stark to succeed themselves as members of said Board for the term of six years each.

That the Synod of Missouri of the Presbyterian Church in the United States of America, claimed by complainants to be the United Church in the year 1908, elected Ben Eli Guthrie, P. H. Rea and Luther Nickell to succeed themselves as members of said Board for the term of six years each, and in 1910 elected A. C. Stewart, George Ward and David F. Manning to succeed themselves as members of said Board for the term of six years each, and at the same time elected Rev. Merle H. Anderson to fill out the unexpired term of Reverend E. D. Pearson, then deceased, as a member of said Board, and in 1912 elected J. C. Cobb and W. P. Stark to succeed themselves as members of said Board for the term of six years each, and at the same time elected J. L. Roemer as a member of said Board to succeed Rev. Merle H. Anderson for a term of six years and Isaac H. Orr to succeed W. T. Baird, then deceased, thereon for a term of six years.

That the said John C. Cobb, W. P. Stark, Ben Eli Guthrie, P. H. Rea, Luther Nickell, A. C. Stewart, George Ward, David F. Manning, J. L. Roemer and Isaac H. Orr, now claim to be lawful members of said Board of Trustees of Missouri Valley College.

That if it be found to be as alleged in the answer that said persons are [indispensible] parties to this action, it is agreed that J. L. Roemer and Isaac H. Orr are proper to be made such parties in place and stead of their predecessors on said Board, the Rev. E. D. Pearson and W. T. Baird, now deceased.

That at the time of the institution of this suit and at the time of the filing of the answer herein, the said E. D. Pearson, W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, W. T. Baird, George Ward, Ben Eli Guthrie and Luther Nickell were citizens and residents of the State of Missouri, and that said W. P. Stark, David F. Manning, Peter H. Rea, John C. Cobb, A. C. Stewart, George Ward, Ben Eli Guthrie, Luther Nickell, J. L.

Roemer, and Isaac H. Orr are now citizens and residents of the State of Missouri.

It is further agreed that the above may be introduced in evidence in this case subject to any objection for competency or relevancy.

VIRGIL V. HUFF,

Solicitor for Complainants.

ROBERT M. REYNOLDS,

Solicitor for Defendants.

(Decree, December 15, 1913.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

The Synod of Kansas of the Presbyterian Church in the United States of America, et al., Complainants,

No. 3540. vs.

Missouri Valley College, et al., Defendants.

Decree.

This cause came on for hearing this 15th day of December, 1913. The parties appeared by counsel and the Court
675 having heard the evidence and arguments, and being fully advised in the premises orders, adjudges and decrees:

1. The issues of this cause are hereby found in favor of the plaintiffs.

2. The union of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America, consummated in 1906, and referred to in the bill, was in all respects lawful and valid and resulted in the formation of the United Church under the name of the Presbyterian Church in the United States of America, which is a continuation of both former churches, possessing all the legal and corporate rights theretofore possessed by each. Such union, the validity of which is thus affirmed, is binding upon all classes of persons represented by the personal plaintiffs, who affirm the validity of such union, as well as the corporate plaintiff, the Synod of Kansas of the Presbyterian Church in the United States of America, and also binding upon all classes of persons represented by personal defendants who deny such validity, as well as the corporate defendant, Missouri Valley College, the personal plaintiffs being proper representatives of the class which affirm the validity of the

union, and the personal defendants being proper representatives of the class which deny the validity thereof.

3. By the union of 1906 aforesaid, the Kansas Synod of the Cumberland Presbyterian Church, and the Kansas Synod of the Presbyterian Church in the United States of America were united into the Kansas Synod of the Presbyterian Church of the United States of America, and the Kansas Synod of said united church was by and in pursuance of said act of union made, and now is, the owner and successor to all the rights, franchises and interests in and to all of the property and endowments, real and personal, held in trust by the defendant corporation, Missouri Valley College for the former Kansas Synod of the Cumberland Presbyterian Church, and is entitled to all the use and control of all said property formerly belonging to the Kansas Synod of the Cumberland Presbyterian Church, by and under the charter of said corporate defendant, the title of which is as against the personal defendants and those represented by them forever quieted.

4. The personal defendants, their agents and employees, as well as those represented by said defendants, are hereby decreed to have no interest in the property mentioned in the bill, and each of them, including his agents, employees and representatives, is hereby perpetually enjoined from using or controlling or attempting to use or control any of the properties held in trust by the corporate defendant, Missouri Valley College, which said property is held by said corporation for the use of the Presbyterian Church in the United States of America, and is enjoined to use and permit the use and control at all [time-] of such property of every kind and character, including all personalty and church records by and for the united church and such subordinate divisions hereof as is provided in the act of union respecting the franchises to said property formerly belonging to the Cumberland Presbyterian Church and the respective subdivisions hereof.

5. The personal defendants shall pay the costs of this proceeding; and none of the costs hereof are to be paid by the corporate defendant, Missouri Valley College.

6. The court retains jurisdiction to make such other and further orders and decrees as may be just and equitable, or as may be necessary to enforce the provisions hereof, and the determination herein against the parties hereto or any person of the class represented by them.

ARBA S. VANVALKENBURGH,
Judge.

- 677 (Stipulation in College Case, No. 3540, relative to Appeal, filed in the District Court on May 11, 1914.)

It having first just come to the knowledge of counsel for complainants and defendants that possibly some of the defendants died before and possibly some of them after the entry of the decree in this cause, it is agreed and stipulated that in the petition for and the allowance of an appeal in this cause such defendants and their personal representatives, if any, may be ignored and disregarded, and that the appeal shall not be dismissed for the reason that they may not have joined in the petition therefor, or for the reason that the interests of the defendants presenting the petition for an appeal are not severed in the appeal from the interests of such defendants as may have died, or their personal representatives.

Kansas City, Mo., April 17, 1914.

FRANK HAGERMAN,
VIRGIL V. HUFF,
Solicitors for [Complainant.]

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for Defendants.

-
- 678 (Stipulation in College Case, No. 3540, as to Death of E. P. Grimes, filed in the District Court on June 2, 1914.)

It is hereby stipulated and agreed, that the defendant, G. P. Grimes, herein, is now deceased.

VIRGIL V. HUFF,
Solicitor for the Complainants.

ROBERT D. REYNOLDS,
Solicitor for the Defendants.

-
- 679 (Invitation to Missouri Valley College to join in Appeal in College case, No. 3540, filed in the District Court on June 5, 1914.)

To Missouri Valley College:

You are hereby invited to join with J. W. Duvall, A. W. Green, L. F. Clemens, William Hinton, and certain others of the defendants in the above entitled cause, in a petition for an appeal in the above entitled cause, to the United

ates Circuit Court of Appeals for the Eighth Circuit, to
erse the decree in the above entitled cause, rendered on
15th day of December 1913, or you will be deemed to
e acquiesced in said decree, and said appealing defend-
s will present said petition for an appeal and prosecute
same without joining you as a party.

Said petition for an appeal will be presented to said
istrict Court, for allowance, at the Court Room of said
urt in Kansas City, Jackson County, Missouri, on Fri-
y the 5th day of June, 1914, at 10 o'clock A. M. or as soon
reafter as said petition can be heard.

ROBERT M. REYNOLDS,
SANFORD B. LADD,

Solicitors for said Appealing Defendants.

Service of the above is accepted this day of May,
4, and I, the undersigned, declined to join in said peti-
n for appeal.

Return.

ate of Missouri,
County of Newton,—ss.

B. W. Bridges, Sheriff, being duly sworn upon his oath,
ates that on the 1st day of June, 1914, at the County of
wton in the State of Missouri, he served the within and
egoing notice upon William P. Stark, the President of
Board of Trustees of Missouri Valley College, by de-
claring to him a true copy of the same.

B. W. BRIDGES,
Sheriff.

Subscribed and sworn to before me this 1st day of
June, 1914.

FRANK P. MARLOW,
Circuit Clerk, Newton County, Missouri.

My commission as a Notary Public will expire the
y of 191.....

invitation to and Declination of J. E. Cortner to join in
Appeal in College Case, No. 3540, filed in the District
Court on June 5, 1914.)

J. E. Cortner:

You are hereby invited to join with J. W. Duvall, A. W.
een, A. F. Clemens, William Hinton and certain others

of the defendants in the above entitled cause, in a petition for an appeal in the above entitled cause, to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the decree in the above entitled cause, rendered on the 15th day of December, 1913, or you will be deemed to have acquiesced in said decree, and said appealing defendants will present said petition for an appeal and prosecute the same without joining you as a party.

681 Said Petition for an appeal will be presented to said District Court, for allowance at the Court Room of said Court in Kansas City, Jackson County, Missouri, on Friday, the 5th day of June, 1914, at 10 o'clock A. M. or as soon thereafter as said petition can be heard.

ROBERT M. REYNOLDS,
SANFORD B. LADD,

Solicitors for said Appealing Defendants

Service of the above is accepted this 19th day of May 1914, and I, the undersigned decline to join in said petition for appeal.

J. E. CORTNER.

State of Missouri,
County of Saline,—ss.

Be it remembered that on this 19th day of May, A. D. 1914, before me the undersigned, a Notary Public within and for said County and State personally appeared J. E. Cortner, to me known to be the person described in and who executed the foregoing acceptance of service and declination and acknowledged that he executed the same as his free act and deed.

My Commission as Notary Public will expire on the 24th day of August, 1916.

In Testimony whereof, I have hereunto set my hand and affixed my [notorial] seal at my office in Marshall Missouri, the day and year in this certificate first aforesaid.

(Seal)

ALBERT B. HOY,
Notary Public

682 (Petition for and Order allowing Appeal in College Case, No. 3540, filed in the District Court of June 5, 1914.)

The Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler, Complainants,

No. 3540. vs.

Missouri Valley College, a corporation, J. W. Duvall, J. E. Cortner, A. W. Green, L. F. Clemens, S. H. McElvain, C. H. Harrison, J. E. Eberts, B. F. Garst, G. W. Freeman, T. C. Newman, William Hinton, G. P. Grimes, and O. G. Dameron, Defendants.

The above named defendants, J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton, and Edwin W. Houx, who are the duly appointed successor to G. P. Grimes, deceased, conveying themselves aggrieved by the decree rendered and entered on the 15th day of December, 1913, in the above entitled cause do hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed, and that a transcript of the record proceedings and papers upon which said decree was made, duly authenticated may be sent to the said United States Circuit Court of Appeals for the Eighth Circuit.

And said appealing defendants further show to the Court that they have, in writing, notified certain of the other defendants in said cause, to-wit, Missouri Valley College, J. E. Cortner, C. H. Harrison, T. C. Newman, and O. G. Dameron, of their intention to present this petition for an appeal, and have also in writing invited said other defendants to join with them in said petition for an appeal, and that all of said other defendants except said Missouri Valley College, a corporation, have in writing accepted service of said notices and invitations and have, also in writing, severally declined to join in said petition for appeal, which said notices and invitations, acceptances and declinations, and proof of service of said notice and invitation upon said Missouri Valley College, are now, by said petitioners, presented to the Court and filed herewith.

And the petitioners the appealing defendants, further show to the Court that the defendant G. P. Grimes, is dead and that said Edwin W. Houx is his duly appointed successor.

Dated this 5th day of June, 1914.

ROBERT M. REYNOLDS,
SANFORD B. LADD,

Solicitors for J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman and William Hinton
Appealing Defendants, and Edwin W. Houx, successor to defendant G. B. Grimes, Deceased.

The foregoing petition for appeal is allowed.

Dated June 5, 1914.

ARBA S. VANVALKENBURGH
Judge

684 (Assignment of Errors, in College Case, No. 3540, filed in the District Court on June 5, 1914.)

Now come J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton defendants in the above entitled cause, and Edwin W. Houx, successor to the defendant G. B. Grimes, who is deceased, and aver that in the record and proceedings and decree in the above entitled cause there is manifest error in this:

1. The Court erred in finding the issues in the case in favor of the Complainants.

2. The Court erred in adjudging and decreeing by its decree in this cause that the union of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America was lawful and valid, and resulted in the formation of the united church under the name of the Presbyterian Church in the United States of America.

3. The Court erred in adjudging and decreeing by its decree that said alleged united church is a continuation of both former churches.

4. The Court erred in adjudging and decreeing by said decree that said alleged united church possesses all the legal and corporate rights possessed before said alleged union by each of said former churches.

5. The Court erred in adjudging and decreeing by said decree that said alleged union is binding upon the class of persons represented by the personal plaintiffs who aff

the validity of such union and that it is also binding upon the corporate plaintiff, the Synod of Kansas of the Presbyterian Church in the United States of America, and that it is binding upon all classes of persons represented by the personal defendants who deny such validity, and that it is binding upon the corporate defendant, Missouri Valley College.

6. The Court erred in adjudging and decreeing by its said decree that the personal complainants are proper representatives of the class which affirm the validity of the union and that the personal defendants are proper representatives of the class which deny the validity thereof.

7. The Court erred in adjudging and decreeing by its decree that the alleged union of 1906 the Kansas Synod of the Cumberland Presbyterian Church and the Kansas Synod of the Presbyterian Church in the United States of America were united into the Kansas Synod of the Presbyterian Church in the United States of America; and the Court erred in adjudging and decreeing by its said decree that the Kansas Synod of said alleged united church was by and in pursuance of said act of union made and now is the owner and successor to all the rights, franchises and interests in and to all the property and endowments, real and personal, held in trust by the defendant corporation Missouri Valley College, for the former Kansas Synod of the Cumberland Presbyterian Church and that it, the Kansas Synod of the Presbyterian Church in the United States of America, is entitled to all the use and control of all said property formerly belonging to the Kansas Synod of the Cumberland Presbyterian Church by and under the charter of said corporate defendant.

8. The court erred in adjudging and decreeing by its said decree the title to said rights, franchises, interests, property and endowments, real and personal, quieted in said Kansas Synod of the Presbyterian Church in the United States of America as against the personal defendants and those represented by them.

9. The Court erred in adjudging and decreeing by its said decree that the personal defendants, their agents and employees as well as those represented by said defendants have no interest in the property mentioned in the bill of complaint.

10. The Court erred in adjudging and decreeing by its decree that the defendants and each of them their agents and employees and those represented by them be enjoined from using and controlling and attempting to use or control any

of the properties held in trust by the corporate defendant the Missouri Valley College and that they be enjoined from using and permitting the use and control of such properties of every kind and character, including personality and [and] church records, by and for said alleged united church and such subordinate divisions thereof as is provided in said act of union respecting the franchises to said property formerly belonging to the Cumberland Presbyterian Church and the respective subdivisions thereof.

11. The Court erred in adjudging and decreeing by said decree that the property mentioned in the bill of complaint is held by the corporate defendant, the Missouri Valley College, for the use of the Presbyterian Church in the United States of America

12. The Court erred in adjudging and decreeing by said decree that the personal defendants should pay the costs of this suit.

13. The defendants aver that neither the corporate complainant nor any of the individual complainants, nor any persons or corporations whom said individual complainants assert they represented, or any of them, have any such interest legal or equitable, in the property of the Missouri Valley College described in the bill of complaint as entitles them or either of them to institute or maintain this action; and the court erred in not so adjudging and decreeing. The Court erred in not dismissing the bill of complaint for that reason. The court erred in adjudging and decreeing that the complainants had any such interests and in rendering a decree in their favor.

14. These defendants aver that all of the property described in the bill of complaint belongs to the Missouri Synod of the Cumberland Presbyterian Church, and is and should be held by the Missouri Valley College in trust for the Missouri Synod of the Cumberland Presbyterian Church, and the Court erred in not so adjudging and decreeing, and for that reason dismissing the bill of complaint.

15. The Synod of Kansas of the Presbyterian Church in the United States of America, the corporate complainant, has and can have by its charter no interest whatever legal or equitable, in the property in controversy or in the schools, colleges or educational institutions outside of the State of Kansas, or even any power or supervision over the religious or education affairs of Presbyterian Churches, schools or colleges outside of the State of Kansas, and

Court erred in not so adjudging and decreeing, and for that reason dismissing the bill of said corporate complainant.

16. The defendants (other than the Missouri Valley College) are the lawful members of the Board of Trustees of the College and as such entitled to the possession, management and control of the property described in the bill and whose title is vested in the corporate defendant; and the Court erred in not so adjudging and decreeing, and erred in not dismissing the bill of complaint for that reason.

17. These defendants aver that said alleged union and merger was invalid and without legal effect, and that the equitable and beneficial title to the property involved in this controversy after said alleged merger and union, remained vested in the Missouri Synod of the Cumberland Presbyterian Church, and that the right to the possession, management and control thereof was, after said alleged merger and union vested in the individual defendants Duvall, Harrison, Elberts, Freeman, Garse, Newman, Hinton, Grime, and Dameron, as members of the Board of Trustees of said Missouri Valley College, they having been so appointed by the said Missouri Synod of the Cumberland Presbyterian Church in pursuance of the provisions of the charter of said corporate defendant; and that by said alleged merger and union, no title, equitable or beneficial and no right to the possession, use, control and management thereof, passed to or vested in the Kansas Synod of the Presbyterian Church in the United States of America, or in any of its agents, officers or appointees; and the court erred in not so adjudging and decreeing by its decree and for that reason dismissing the bill of complaint.

18. These defendants aver that the bodies and judicatories of the Cumberland Presbyterian Church which voted in favor of said alleged merger and union had no power under the constitution and laws of the Cumberland Presbyterian Church to take any action which would have the result of merging and uniting the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America; the action by said bodies and judicatories as a result of which a merger and union of the two churches is asserted is null and void, and without binding effect upon any of the organizations or membership of the Cumberland Presbyterian Church; the court erred in not so finding, adjudging and decreeing, by its decree, and for that reason, dismissing the bill of complaint and the amendments thereto.

19. The court erred in not adjudging and decreeing by its decree that no merger and union of the two churches had

been accomplished, and erred in not adjudging and decreeing that for that reason the complainants bill of complaint and the amendments thereto should be dismissed.

20. The court erred in overruling the plea of the defendants to the bill of complaint and the amendments thereto which plea named certain persons and averred them to be necessary and [indispensible] parties to the suit, and erred in refusing to make the persons so named or any of them parties to the suit before any further proceedings were had and made therein.

21. By order of Court made at the time said plea was overruled, the defendants were given leave to set up in their answer the same or similar matters as were pleaded in said plea. The defendants therefore, in pursuance of such leave did set up, that the same persons mentioned in their said plea were necessary and [indispensible] parties to the suit. The court erred in refusing to make such persons or any of them parties to the suit, and erred in proceeding to a decree without having ordered that said persons or any of them be made parties.

22. The court erred in not following the opinion, decision and judgment of the Supreme Court of Missouri, the Court of last resort of the State, in the case of Boyles vs. Roberts reported in [volume] 222 of the official reports of that Court at page 613. That opinion, decision and judgment was entered and rendered before the institution of this suit, and constituted a rule of property and is controlling upon the National Courts sitting within the state so far as it had a bearing, direct or indirect, upon the rights of property situated within the boundaries of the State. For this reason the Court erred in not dismissing the bill of complaint with the amendments thereto.

23. These defendants aver that the adoption of the so-called plan of union through the passage of what is known as the Templeton Resolution in May, 1904, was brought about by fraudulent methods and for that reason the action taken in that regard was null and void, and the Court erred in not so adjudging and decreeing, and for that reason, in dismissing the bill of complaint.

24. These defendants aver that the alleged merger of the union was null and void for the reason that only a part of the scheme therefor was submitted to the Presbyteries for their approval or disapproval, and the Court erred in not so, adjudging and decreeing and in not dismissing the bill of complaint for that reason.

25. These defendants aver that the action of the General Assembly of the Cumberland Presbyterian Church and of the Synods and Presbyteries of that church upon which the alleged merger and union is based was ultra vires of those bodies and without legal effect, and that the Court erred in not so adjudging and decreeing, and in not dismissing the bill of complaint for that reason.

Wherefore these defendants pray that the said final decree be reversed and that said Court may be directed to enter a decree dismissing the complainant's bill of complaint and the amendments thereto.

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for Appealing Defendants.

30 (Bond on Appeal in College Case, No. 3540, filed in the District Court on June 5, 1914.)

Know All Men By These Presents, that we, J. W. Duvall of Chariton County, Missouri, and Samuel H. McElvain of Saline County, Missouri, as principals and William Hammack and W. R. Tindall of said Chariton County, Missouri as sureties, are held and firmly bound unto the Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler in the full and just sum of one thousand dollars (\$1,000.) to be paid to the Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler, their heirs, executors, administrators, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 5th day of June, A. D. 1914.

Whereas, lately at the November Term, A. D. 1913, of the District Court of the United States for the Western Division of the Western District of Missouri, in a suit pending in said Court between the Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, E. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler, complainants, and Mis-

souri Valley College, a corporation, J. W. Duvall, J. E. Cortner, A. W. Green, L. F. Clemens, S. H. McElvain, C. H. Harrison, J. E. Eberts, B. F. Garst, G. W. Freeman, T. C. Newman, William Hinton, G. P. Grimes and O. G. Dameron, Defendants, a decree was rendered against the said defendants, and of the said defendants the said J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton, and Edwin W. Houx successor to the defendant G. P. Grimes, who is deceased have petitioner for and the said District Court of the United States has allowed them an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse said decree in the aforesaid suit, and a citation directed to the said complainants citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that the said J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton, and Edwin W. Houx, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else remain in full force and virtue.

(Seal)

J. W. DUVALL

(Seal)

S. H. McELVAIN

(Seal)

WILLIAM HAMMACK

(Seal)

W. R. TINDALL

692 (Order allowing Appeal in College Case, No. 3540, June 5, 1914.)

Now on this day come J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman and William Hinton, defendants in the above entitled cause, and Edwin W. Houx, successor to defendant G. P. Grimes, who is deceased, and present their petition for appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and at the same time make it appear to the satisfaction of the Court that G. P. Grimes, one of the defendants is deceased and that said Edwin W. Houx is his duly appointed successor and that they, the said appealing defendants have, in writing notified the other defendants in this cause, that is to say Missouri Valley College, a corporation, J. E. Cortner, C. H.

Harrison, T. C. Newman, and O. G. Dameron, of their, the said appealing defendants' intention to present said petition for an appeal, and have also in writing, invited said other defendants to join with them, the said petitioners, in such petition for an appeal and that all of said other defendants except said Missouri Valley College, a corporation, have in writing accepted service of said notices and invitations and have also in writing declined to join in said petition for an appeal, which said notices, invitations, acceptances, declinations and proof of the service of said notice and invitation upon the said Missouri Valley College, a corporation are now by said petitioners presented to the court, and the said Missouri Valley College not appearing to join in said petition for appeal, it is thereupon ordered by the court that said petition for appeal, said assignment of errors, said written notices, invitations, acceptances, declinations, and proofs of service be filed and made a part of the record in this cause.

It is further ordered that the interests of the defendants so presenting the petition for appeal be severed in said appeal from the interests from all said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the defendants J. W. Duvall, A. W. Green, L. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, and William Hinton, and to said Edwin W. Houx, successor to defendant G. P. Grimes, an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the final decree rendered in this cause, in accordance with the prayer of said petition.

At the same time the said appealing defendants present their bond for appeal in the sum of One Thousand Dollars (\$1,000) with William Hammack and W. R. Tindall as sureties thereon, which said bond is now approved by the Court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to said United States Circuit Court of Appeals for the Eighth Circuit.

Dated Kansas City, Missouri, June 5, 1914.

ARBA VAN VALKENBURGH

Judge.

4 (Order overruling Pleas and Demurrers to Bill of Complaint, filed and entered July 16, 1912.)

James M. Barkley etc. and William H. Roberts etc. Com
plainants.

No. 3546. C. C. vs.

Hugh Hayes, G. E. C. Sharp et al, Defendants.

Now at this day this cause coming on for further hearing and the question of the sufficiency of the pleas and demurrers to the complainants' bill of complaint, and the amendment thereto, having heretofore been argued by counsel and submitted to and taken under advisement by the court, and the court having now fully considered the same, it is ordered and adjudged that each and all of said pleas and demurrers be and the same are hereby overruled. To which said order and [judgement] of the court upon each of said pleas and each of said demurrers, the defendants filing same, respectively, do severally except.

It is further ordered by the court that those defendants represented by W. C. Caldwell, Robert M. Reynolds, Thomas B. Allen and Sanford B. Ladd, or either of them, have, and they are now granted leave to file their answers to said bill of complaint, as amended, on or before the 7th day of October 1912.

And it is further ordered that they may, if they so choose, set up in their said answers the same or similar matters and things pleaded in their said demurrers and pleas.

Dated July 16, 1912.

ARBA S. VAN VALKENBURGH.

Judge

695 (Replication in General Church Case, No. 3546, filed in the District Court on October 16, 1912.)

The replication of the above named complainants to the joint and several answers of Hugh Hayes and the other defendants therein, filed October 11, 1912.

These replicants, saving and reserving to themselves and all manner of advantages of exception which may have had or taken to the manifold errors, uncertainties and insufficiencies of the answers of the defendants, for replication thereunto saith that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive and insufficient in law to be replied unto by these replicants; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto

and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain and prove as this honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

FRANK HAGERMAN,
Solicitor for Complainants.

96 (Order of Dismissal in General Church Case, No. 3546,
December 6, 1913.)

This cause coming on for hearing this 6th day of December, 1913, the same is without prejudice dismissed as to the defendants C. A. Wade, Elisha Hall and Napoleon M. Irwin.

ARBA S. VAN VALKENBURGH,
Judge.

(Decree, December 15, 1913.)

in the District Court of the United States for the Western
Division of the Western District of Missouri.

James M. Barkley, et al., Complainants,
No. 3546 vs.
Hugh Hayes, et al., Defendants.

Decree.

This cause came on for hearing this 15th day of December, 1913. The parties appeared by counsel, and the court having heard the evidence and arguments, and being fully advised in the premises, orders, adjudges and decrees:

97 1. The issues of this cause are hereby found in favor
of the plaintiffs, except as hereinafter found or dis-
posed of in Paragraphs 5 and 6 hereof.

2. The union of the Cumberland Presbyterian Church with
the Presbyterian Church in the United States of America,
consummated] in 1906 and referred to in the bill, was in all re-
pects lawful and valid and resulted in the formation of the
united church under the name of the Presbyterian Church in
the United States of America, which is a continuation of
both former churches, possessing all the legal and corporate
rights theretofore possessed by each. Such union, the valid-
ity of which is thus affirmed, is binding upon all classes of
persons represented by the plaintiffs, who affirm the validity
of such union, and also binding upon all classes of persons

represented by the defendants, who claim to be members of the Cumberland Presbyterian Church and deny such validity, plaintiffs being proper representatives of the class which affirm the validity, except as hereinafter found or disposed in paragraphs 5 and 6 hereof, of the union, and the defendants proper representatives of the class which deny the validity thereof.

3. Said united church and the plaintiffs and those represented by them, for it, are entitled to all the property described in the bills and amendments thereto, except as hereinafter found or disposed of in paragraphs 5 and 6 hereof, and the title thereof is quieted into and in said united church free of all right, title or claim of said defendants, or those represented by them, being members of said Cumberland Presbyterian Church, who deny the validity of such union.

4. Each defendant, his agents, employes and representatives, and those represented by him, is perpetually enjoined from using, or permitting to be used, any of such church property, except as hereinafter found or disposed of in paragraphs 5 and 6 hereof, for the benefit of any person or persons, congregation, church or association, who or which does not recognize the validity of said union, and they are enjoined to use and permit to be used, at all times, such property including the furniture and church records, by and for the united church, as by its form of government, book of discipline, rules and regulations and constitution provided.

5. This decree is made without prejudice to any rights of plaintiffs by supplemental or original bill or proceedings at law to pray an accounting to recover the rents, profits and value, if any, of all use of the property recovered since the date of the union of the churches. It is also without prejudice to the rights of the parties to the property of the Mount Carmel Cumberland Presbyterian Church described in Volume 2 of the printed record herein, at pages 573, 574, 631-632.

6. The issues in this cause so far as they affect the defendant, Ephraim Woodrow, and the property whose description is to be found in Book 110 at page 423 in the office of the Recorder of Deeds for Lawrence County, Missouri being the same property described as Lots 56, 57 and 58 in the Town of Lyons Block 5, Section 12, Township 2 Range 29, in Lawrence County, Missouri, are found in favor of the defendant Woodrow and said property and against the complainants. It is, therefore, ordered, adjudged and

decreed that the complainants' bill of complaint and the amendments thereto be and the same are hereby dismissed as to the said defendant Ephraim Woodrow and the property described in this paragraph, such dismissal being, however, without prejudice.

7. Defendants shall pay the costs of this proceeding.
8. The court retains jurisdiction to make such other and further orders and decrees as may be just and equitable, or as may be necessary to enforce the provisions hereof, and the determination herein against any of the parties hereto, or any persons of the class represented by them.

ARBA S. VAN VALKENBURGH,
Judge.

99 (Stipulation in General Church Case, No. 3546, relative to Appeal, filed in the District Court on May 11, 1914.)

It having first just come to the knowledge of counsel for complainants and defendants that possibly some of the defendants died before and possibly some of them after the entry of the decree in this cause, it is agreed and stipulated that in the petition for and the allowance of an appeal in this cause such defendants and their personal representatives, if any, may be ignored and disregarded, and that the appeal shall not be dismissed for the reason that they may not have joined in the petition therefor, or for the reason that the interests of the defendants presenting the petition for an appeal are not severed in the appeal from the interests of such defendants as may have died or their personal representatives.

Kansas City, Mo., April 17, 1914.

FRANK HAGERMAN,
VIRGIL V. HUFF,
Solicitors for Complainants.

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for Defendants.

100 (Stipulation as to Death of certain Defendants in General Church Case, No. 3546, filed in the District Court on June 2, 1914.)

It is hereby stipulated and agreed, that the defendants A. Harrison Devins, Jesse William Kennedey, O. H. Woods, J. N. Weidemeyer, S. A. Gammill, R. S. Burney and Samuel E. Atkins, herein, are now deceased.

VIRGIL V. HUFF,
Solicitor for Complainants.

ROBERT M. REYNOLDS,
Solicitor for Defendants.

(Invitation to and Declination of W. E. Scott to join in Appeal in General Church Case, No. 3546.)

To William E. Scott:

You are hereby invited to join with James E. Eberts, 701 James G. Turk, J. W. Duvall, L. F. Clemens and certain others of the defendants in the above entitled cause, in a petition for an appeal in the above entitled cause, to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the decree in the above entitled cause, rendered on the 15th day of December, 1913, or you will be deemed to have acquiesced in said decree, and said appealing defendants will present said petition for an appeal and prosecute the same without joining you as a party.

Said petition for an appeal will be presented to said District Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Friday, the 5th day of June, 1914, at 10 o'clock A. M. or as soon thereafter as said petition can be heard.

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for said Appealing Defendants.

Service of the above is accepted this 26th day of May, 1914, and I, the undersigned, decline to join in said petition for appeal.

WILLIAM E. SCOTT.

State of Missouri,
County of Dade,—ss.

Be it remembered, that on this 26 day of May, A. D. 1914, before me, the undersigned, a Notary Public within and for said County and State, personally appeared William E. Scott to me known to be the person described in and who executed the foregoing acceptance of service and declina

, and acknowledged that he executed the same as his
act and deed.

My commission as Notary Public will expire on the 8th
of June A. D. 1916.

Testimony Whereof, I have hereunto set my hand and
[—] [Greenfield, Mo.,] at my office in Greenfield, Mo., the
day and year in this certificate first aforesaid.

al)

SAMUEL A. PAYNE,
Notary Public.

(Petition for and Order allowing Appeal in General
Church Case, No. 3546, filed in the District
Court on June 5, 1914.)

mes M. Barkley, Moderator of the General Assembly and
Chairman of the Executive Commission of the Gen-
eral Assembly of the Presbyterian Church in the Unit-
ed States of America, and William H. Roberts, Stated
Clerk of the General Assembly and Secretary of the
Executive Commission of the General Assembly of
the Presbyterian Church in the United States of Amer-
ica, individually and as such officers and representa-
tives of the members of the Presbyterian Church in
the United States of America, Complainants,

No. 3546. vs.

ugh Hayes, G. E. C. Sharp, J. F. Shepard, O. H. Woods,
Lee Cook, V. N. Bray, Daniel G. Wade, V. B. Robert-
son, W. R. Slaughter, N. Logan, W. H. Billings, A. M.
Todd, W. T. North, J. C. Bigham, S. A. Gammill, Lee
Reese, F. E. P. Harlan, Charles O. Wall, S. A. Catlin
M. M. Hunnell, J. M. Weidemeyer, James G. Turk, E.
T. Steele, A. M. Buchanan, L. F. Clemens, J. W. Du-
vall, R. L. Layman, A. W. Green, C. Elmer Turner,
E. S. Morrison, James C. Jenkins, John W. Walker,
Heber C. Johnston, J. A. Chinn, T. W. Craven, John
T. Trent, R. S. Burney, F. M. Adair, Ambrose E. La-
rue, John R. Kerr, Hubert Elliott, Robert Graham,
Frank Ramsey, Alexander Phenix, Samuel E. Atkins,
James M. Russell, William E. Scott, James E. Shaw,
John Neally, Lee McLemore, A. A. Young, Ephraim
Woodrow, J. W. Manning, Erastus W. Hillhouse, S.
M. Fryar, Caleb Andrews, A. Harrison Devin, James
Martin, William L. Foley, Jesse William Kennedy, F.
M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil,
Laura Cook (wife of John Cook), E. G. Stewart, John

D. Howell, Edward R. Duggins, Samuel H. McElvain, Thomas C. Newman, Samuel H. Murray, James Davis, J. Thomas Jones, James E. Eberts, John Lamar and Robert L. Foster, Defendants.

The above named defendants, J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. P. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erasmus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones, and James E. Eberts, conceiving themselves aggrieved by the decree rendered and entered on the 15th day of December, 1913, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of [Appeal] for the Eighth Circuit.

And said appealing defendants further show to the court that they have, in writing, notified certain of the other defendants in said cause, to-wit: Hugh Hayes, G. E. C. Sharp, Lee Cook, V. N. Bray, Daniel G. Wade, V. B. Robertson, W. R. Slaughter, W. T. North, J. C. Bigham, F. E. P. Harlan, A. M. Buchanan, C. Elmer Turner, E. S. Morrison, J. A. Chinn, F. M. Adair, Ambrose E. Larue, John R. Kerr, Hubert Elliott, Frank Ramsey, Alexander Phenix, William E. Scott, James E. Shaw, Lee McLemore, S. M. Fryar, Thomas C. Newman, Samuel H. Murray, John Lamar, and Robert L. Foster of their intention to present this petition for an appeal, and have also, in writing, invited said other defendants to join with them in such petition for an appeal and that all of said other defendants except V. B. Robertson, C. Elmer Turner, A. M. Buchanan and Lee Cook have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for appeal, which said notices and invitations, acceptances, and declarations, and proof of service of said notices and invitations upon said V. B. Robertson, C. Elmer Turner, A. M. Buchanan

man and Lee Cook, are now, by said petitioners, presented to the court and filed herewith.

04 And the petitioners, the appealing defendants, further show to the court that the following named defendants, O. H. Woods, S. A. Gammill, J. M. Weidemeyer, R. Burney, Samuel E. Atkins, A. Harrison Devin and Jesse William Kennedy are dead.

Dated this 5th day of June, 1914.

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for J. F. Shepard,
N. Logan, W. H. Billings, A.
M. Todd, Lee Reese, Charles
O. Wall, S. A. Catlin, M. M.
Hunnell, James G. Turk, E.
T. Steele, L. F. Clemens, J.
W. Duvall, R. L. Layman, A.
W. Green, James C. Jenkins,
John W. Walker, Heber C.
Johnston, T. W. Craven, John
T. Trent, Robert Graham,
James M. Russell, John Neal-
ly, A. A. Young, J. W. Man-
ning, Erastus W. Hillhouse,
Caleb Andrews, James Mar-
tin, William L. Foley, F. M.
Rose, Charles Rose, E. C.
Haines, J. S. Graybeil, Laura
Cook (wife of John Cook), E.
G. Stewart, John D. Howell,
Edward R. Duggins, Samuel
H. McElvain, James Davis, J.
Thomas Jones, and James E.
Eberts, Appealing Defendants.

The foregoing petition for appeal is allowed.

Dated June 5, A. D. 1914.

ARBA S. VAN VALKENBURGH,
Judge.

5 (Assignment of Errors in General Church Case, No. 3546, filed in the District Court on June 5, 1914.)

Now come J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hun-

nell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John Trent, Robert Graham, James M. Russell, John Neally, A. Young, J. W. Manning, Erastus W. Hillhouse, Cal. 706 Andrews, James Martin, William L. Foley, F. Rose, Charles Rose, E. C. Haines, J. S. Grayb Laura Cook (wife of John Cook), E. G. Stewart, John Howell, Edward E. Duggins, Samuel H. McElvain, James Davis, T. Thomas Jones and James E. Eberts, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause there is manifest error in this:

1. The court erred in finding the issues in the case in favor of the complainants.

2. The court erred in adjudging and decreeing by its decree in this cause that the union of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America was lawful and valid, and resulting in the formation of the united church under the name of the Presbyterian Church in the United States of America.

3. The court erred in adjudging and decreeing by its decree that said alleged united church [in] a continuation of both former churches.

4. The court erred in adjudging and decreeing by its said decree that said alleged united church possesses all the legal and corporate rights possessed before said alleged union by each of said former churches.

5. The court erred in adjudging and decreeing by its said decree that said alleged union is binding upon the classes of persons represented by the plaintiffs who affirm the validity of such union and that it is binding upon all classes of persons represented by the defendants who claim to be members of the Cumberland Presbyterian Church and deny such validity.

6. The court erred in adjudging and decreeing by its said decree that the complainants are proper representatives of the class which affirm the validity of said alleged union, and that the defendants are proper representatives of the class which deny the validity thereof. 707

7. The court erred in adjudging and decreeing by its decree that said alleged united church and the complainants and those alleged to be represented by them for it, are entitled

to all or any of the property described in the bill of complaint and the amendments thereto.

8. The court erred in adjudging and decreeing by its said decree, the title to said properties quieted into and in said alleged united church and that said title is free of all right, title or claim of the defendants, or those represented by them who deny the validity of said alleged union.

9. The court erred in adjudging that the defendants and each of them, their agents, employees and representatives, and those represented by them, be enjoined from using or permitting to be used any of such church property for the benefit of any person, persons, congregation, church or association who or which does not recognize the validity of said alleged union, and in enjoining them from using and permitting to be used, said property by and for said alleged united church.

10. The court erred in adjudging and decreeing by its said decree that the defendants should pay the costs of the proceeding.

11. These defendants aver that neither of the complainants, either as an individual or as an officer of the Presbyterian Church in the United States of America, or as a representative of the members of said Presbyterian Church in the United States of America has nor has the said James M. Barkley, complainant, as Moderator of the General Assembly, or Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, nor has the said William H. Roberts, as Stated Clerk of the General Assembly, or as Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America any such interest in any of the property involved in this suit, real or personal, or in the matter in controversy herein, as entitles him to maintain this or any other action relating to the title to any of said property or the possession thereof; and the court should so have adjudged and decreed by its decree, and the court erred in not so adjudging and decreeing by its decree and in adjudging and decreeing by its said decree that they and each of them did possess such interest.

12. These defendants aver that this suit was not brought by the complainants on behalf of any other members of the Presbyterian Church, and that they had no right to bring the same on behalf of any such other members; they are in no wise representatives of any persons or class of persons pos-

sessing such an interest in any of the property involved in the suit as would entitle such persons or class of persons to invoke the aid of a court of equity for the protection of the interests in such property; and the court erred in not so adjudging and decreeing by its said decree; and the court erred in adjudging and decreeing by its said decree that the complainants were such representatives and as such entitled to maintain this action.

13. The court erred in not adjudging and decreeing by its decree that the bill of complainants be dismissed, for the reason that neither of them possessed any such relation to or interest in the property, either as individuals or as officers or as representatives of persons or a class of persons who do possess such an interest in the properties as entitled them or either of them to institute or maintain this action.

14. These defendants aver that said alleged union and merger was invalid and without legal effect, and that the title both legal, equitable and beneficial, to the properties involved in this controversy remained, after said alleged merger and union, vested in the same persons, associations and organizations as before said alleged merger and union; and that no interest whatever in any of them, legal, equitable or beneficial, passed to or vested in the Presbyterian Church in the United States of America, or said alleged united church, or any of its organizations or any of its members, as a result of said alleged merger and union; and the court erred in not so adjudging and decreeing by its decree, and dismissing the bill of complaint and the amendments thereto.

15. These defendants aver that the title to the several properties described in the bill of complaint and its amendments, and the answer thereto, was vested in the persons or associations or organizations mentioned in the instrument which conveyed them, or created them, or under which they were held, as fully set forth in the answer; in each case the persons or classes of persons or organizations, purely local in the State of Missouri, possessed the legal, equitable and beneficial interest therein. No part of it belonged to the entire membership of the Cumberland Presbyterian Church or to the General Assembly of that church, nor did such entire membership or said General Assembly have any interest therein, legal, equitable or beneficial; and the court erred in so adjudging and decreeing by its said decree. The court erred in holding adjudging and decreeing that such property belonged to the entire membership of the church in the United States.

16. These defendants aver that the bodies and judicatories of the Cumberland Presbyterian Church which voted in favor of said alleged merger and union had no power under the constitution and laws of the Cumberland Presbyterian Church to take any action which should have the result of merging and uniting the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America; the action by said bodies and judicatories as a result of which merger and union of the two churches is asserted, was null and void, and without binding effect upon any of the organizations or membership of the Cumberland Presbyterian Church; that court erred in not so finding, adjudging and decreeing by its decree, and for that reason dismissing the bill of complaint and the amendments thereto.

17. The court erred in not adjudging and decreeing by its decree that no merger and union of the two churches had been accomplished, and erred in not adjudging and decreeing that for that reason the complainant's bill of complaint and the amendments thereto should be dismissed.

18. The court erred in adjudging and decreeing by its said decree that said alleged united church and the complainant and those represented by him for it were entitled to the property in Henry County, Missouri, described as follows: One-half acre, commencing at a point 208 $\frac{1}{3}$ feet due north of the southeast corner of Section 10, Township 49, Range 46; thence north 208 $\frac{1}{3}$ feet; west 208 $\frac{1}{3}$ feet; south 208 $\frac{1}{3}$ feet; east 208 $\frac{1}{3}$ feet to the beginning, known as the Mt. Carmel Cumberland Presbyterian Church property described in the deed recorded in Book 84 at page 17 in the office of the Recorder of Deeds for said Henry County. The court erred in not adjudging by its decree that the decree rendered by the Circuit Court of Henry County, State of Missouri, on the 14th day of November 1909 in a proceeding which involved the title to said property and the same controversy raised in this suit was res judicate and to be regarded as such. It erred in not adjudging and decreeing that the bill of complaint as to said property and as to the defendant James G. Turk, be dismissed.

19. The court erred in overruling the plea of the defendants to the bill of complaint and the amendments thereto which plea named certain persons and averred them to be necessary and indispensable parties to the suit, and erred in refusing to make the persons so named or any of them parties to the suit before any further proceedings were had and made therein.

20. By order of court made at the time said plea was over-ruled, the defendants were given leave to set up in their answers the same or similar matters as were pleaded in such plea. The defendants therefore, in pursuance of such leave, did set up that the same persons mentioned in their said plea were necessary and indispensable parties to the suit. The court erred in refusing to make such persons or any of them parties to the suit, and erred in proceeding to a decree without having ordered that said persons or any of them be made parties.

21. The bill of complaint and its amendments was multifarious; there was no proof whatever in the case of any conspiracy between the defendants or any of them, as alleged in the bill; in the absence of such proof, the court erred in rendering any decree in favor of the plaintiffs and against the defendants upon the bill of complaint so manifestly multifarious.

22. The court erred in not following the opinion, decision and [judgement] of the Supreme Court of Missouri, the court of last resort of the state, in the case of *Boyles vs. Roberts*, reported in Volume 222, of the official reports of that court on page 613. That opinion, decision and [judgement] was entered and rendered before the institution of this suit, and, constituted a rule of property, and is controlling upon the national courts sitting within the state so far as it had a bearing, direct or indirect, upon the rights of property situated within the boundaries of the state. For this reason the court erred in not dismissing the bill of complaint with the amendments thereto.

23. The Court erred in not following the opinion, decision and [judgement] of the Supreme Court of the State of Missouri being the court of last resort of the state, rendered in the case of *Watson et al vs. Garvin et al*, reported in Volume 33 of the official reports of the opinions of that court at page 33, which opinion, decision and [judgement] was rendered by said court in the year A. D. 1873, and constituted a rule of property to be enforced and applied by the national courts sitting within the boundaries of the state as to property located within the state. Said opinion, decision and [judgement] of the said Supreme Court was to the effect that properties located in the State of Missouri such as are in controversy in this suit and held under conveyances or instruments of writing of the same character as those under which the properties in controversy in this suit are held

belonged to the local congregations or associations or their membership or trustees for the benefit of such local congregations or members thereof named in such conveyances or instruments solely according to the terms of the deeds, conveyances or other instruments of writing by which the properties were conveyed. The court erred in not following said opinion, decision and judgement]; it erred in not adjudging and decreeing that neither of the complainants, either in their individual or alleged official or representative capacity, being either trustees or members of any such local congregation or association had any such interest in any of the properties described in the bill of complaint and its amendments and the answer thereto as entitled them to interfere or institute or maintain this or any other suit in relation to any of said properties or to invoke the powers of the court in their behalf or upon their motion. The court erred in not adjudging and decreeing that the complainants not being such trustees or members of any such local congregation or association, could not assume to be and were not representatives of any such local association or of the members of any such local association or congregation. It erred in not dismissing the bill and its amendments for that reason.

24. These defendants aver that the adoption of the so-called "plan of union" through the passage of what is known as the "Templeton resolution" in May 1904 was brought about by fraudulent methods, and for that reason, the action taken in that regard was null and void, and the court erred in not so adjudging and decreeing, and for that reason, dismissing the bill of complaint.

25. These defendants aver that the alleged merger and union was null and void and for the reason that only a part of the scheme therefor was submitted to the Presbyteries for their approval or disapproval, and the court erred in not adjudging and decreeing, and in not dismissing the bill of complaint for that reason.

26. These defendants aver that the action of the General Assembly of the Cumberland Presbyterian Church and of the Synods and Presbyteries of that Church upon which the alleged merger and union is based was ultra vires of those bodies and without any legal effect, and the court

erred in not so adjudging and decreeing, and in not dismissing the bill of complaint for that reason.

Wherefore, these defendants pray that the said final decree be reversed and that said court may be directed to enter a decree dismissing the complainant's bill of complaint and the amendments thereto.

ROBERT M. REYNOLDS,
SANFORD B. LADD,

Solicitors for Appealing Defendants.

714 (Bond on Appeal in General Church Case, No. 354
filed in the District Court on June 5, 1914.)

Know All Men by These Presents, that we, Thomas V. Craven, of Macon County, Missouri, and James E. Ebert of Johnson County, Missouri, as principals, and D. B. Brown and W. H. Mayer of said Johnson County, as sureties, are held and firmly bound unto James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William M. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, in the full and just sum of Five Thousand Dollars (\$5,000.00) to be paid to the said James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William M. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, their heirs, executors, administrators, successors and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of June, A. D. 1914.

Whereas, lately, at the November Term A. D. 1913, of the District Court of the United States for the Western District

n of the Western District of Missouri, in a suit depending said Court between James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, Complainants, and Hugh Hayes, G. E. C. Sharp, F. Shepard, O. H. Woods, Lee Cook, V. N. Bray, Daniel Wade, V. B. Robertson, W. R. Slaughter, N. Logan, W. Billings, A. M. Todd, W. T. North, J. C. Bigham, S. A. Emmill, Lee Reese, F. E. P. Harlan, Charles O. Wall, S. Catlin, M. M. Hunnell, J. M. Weidemeyer, James G. Turk, T. Steele, A. M. Buchanan, L. F. Clemens, J. W. Duvall, L. Layman, A. W. Green, C. Elmer Turner, E. S. Morrison, James C. Jenkins, John W. Walker, Heber C. Johnson, J. A. Chinn, T. W. Craven, John T. Trent, R. S. Burdett, F. M. Adair, Ambrose E. Larue, John R. Kerr, Hubert Elliott, Robert Graham, Frank Ramsey, Alexander Phenix, Samuel E. Atkins, James M. Russell, William E. Scott, James E. Shaw, John Neally, Lee McLemore, A. A. Young, Ephraim Woodrow, J. W. Manning, Erastus W. Hillhouse, M. Fryar, Caleb Andrews, A. Harrison Devin, James Martin, William L. Foley, Jesse William Kennedy, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, Thomas C. Newman, Samuel H. Murray, James Davis, J. Thomas Jones, James E. Eberts, John Lamar and Robert L. Foster, Defendants, a decree was rendered against the said defendants, except defendant Ephraim Woodrow; and certain of said defendants, to-wit: J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnson, T. W. Craven, John T. Trent, Robert Graham, James Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook, (wife of John Cook), E. G. Stewart, John Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts have petitioned for and have been granted by said Court [as] ap-

peal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the said decree in the aforesaid suit and have obtained a citation directed to the said complainants, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that the said J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John Trent, Robert Graham, James M. Russell, John Neally, A. Young, J. W. Maning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones, and James E. Eberts shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

(Seal)

THOMAS W. CRAVEN,

(Seal)

J. E. EBERTS,

(Seal)

D. B. BROWN.

(Seal)

W. H. MAYER,

717 Witness to signature of D. B. Brown:
J. E. Eberts.

Witness to signature of W. H. Mayer:
J. E. Eberts.

The above bond is hereby approved and ordered to be filed and made a part of the record.

ARBA S. VAN VALKENBURGH
Jud

718 (Order allowing Appeal in General Church Case, No. 3546, June 5, 1914.)

Now at this day come J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven,

John T. Trent, Robert Graham, James M. Russell, John Keally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones, and James E. Eberts, defendants in the above entitled cause, and present their petition for appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and at the same time make it appear to the satisfaction of the court that certain of the defendants, to-wit: O. H. Woods, S. A. Gammill, J. M. Weidemeyer, R. S. Burney, Samuel E. Atkins, A. Harrison Devin and Jesse William Kennedy, are dead; and that they, the said appealing defendants, have, in writing, notified the other defendants in this cause, that is to say, Hugh Hayes, G. E. C. Sharp, Lee Cook, V. N. Bray, Daniel G. Wade, V. B. Robertson, W. R. Laughter, W. T. North, J. C. Bigham, F. E. P. Harlan, A. M. Buchanan, C. Elmer Turner, E. S. Morrison, J. A. Chinn, J. M. Adair, Ambrose E. Larue, John R. Kerr, Hubert Elliott, Frank Ramsey, Alexander Phenix, William E. Scott, James E. Shaw, Lee McLemore, S. M. Fryar, Thomas C. Newman, Samuel H. Murray, John Lamar, and Robert L. Foster, of their, the said appealing defendants' intention to present said petition for an appeal, and have also

19 in writing invited said other defendants to joint with them, the said petitioners, in such petition for an appeal, and that all of said other defendants except V. B. Robertson, C. Elmer Turner, A. M. Buchanan and Lee Cook, have, in writing, accepted service of said notices and invitations, and have also in writing severally declined to join in said petition for an appeal, which said notices, invitations, acceptances, declinations and proof of the service of said notices and invitations upon the said V. B. Robertson, C. Elmer Turner, A. M. Buchanan and Lee Cook, are now, by said petitioners, presented to the court and the said V. B. Robertson, C. Elmer Turner, A. M. Buchanan and Lee Cook not appearing to join in said petition for appeal, it is thereupon ordered by the court that said petition for appeal, said assignment of errors, said written notices, invitations, acceptances, declinations, and proofs of service be filed and made a part of the record in this cause.

It is further ordered that the interests of the defendants in presenting the petition for appeal be severed in said ap-

peal from the interests of all said other defendants herein, and upon consideration of said petition the court now allows the same, and to said defendants, J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybill, Laura Cook, (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts, an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the final decree rendered in this cause, in accordance with the prayer of said petition.

At the same time the said appealing defendants presented their bond for an appeal in the sum of Five Thousand Dollars (\$5,000.) with D. B. Brown and W. H. Mayer as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to said United States Circuit Court of Appeals for the Eighth Circuit.

Dated Kansas City, Missouri, June 5, A. D. 1914.

ARBA S. VAN VALKENBURGH,
Judge

721 (Election to have Record printed in Circuit Court of Appeals, filed in the District Court on July 15, 1914.)

James M. Barkley, et al., Complainants,
No. 3546 vs.

Hugh Hayes, et al., Defendants.

The Synod of Kansas of the Presbyterian Church in the United States of America, et al., Complainants,

No. 3540 vs.

Missouri Valley College, et al., Defendants.

The appellants in the above entitled cause of James M. Barkley, et al., Complainants, vs. Hugh Hayes, et al., Defendants, and also the appellants in the above entitled cause of the Synod of Kansas of the Presbyterian Church in the United States of America, et al., Complainants, vs. Missouri Valley College, et al., Defendants, hereby

lect to have the transcript of the record in said causes on appeal from the District Court of the United States for the Western Division of the Western District of Missouri, to the Circuit Court of Appeals for the Eighth District, printed by the Clerk of the Circuit Court of Appeals.

ROBERT M. REYNOLDS and
SANFORD B. LADD.

Solicitors for Appellants in each of said causes.

(Praeipie for Transcript.)

To the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri.

The above cases were consolidated for trial and hearing in the District Court. The first of them in this praecipe will be designated as "the College case"; the second as "the General Church case".

You will please prepare and certify to one transcript of the record which will serve for both cases in the United States Circuit Court of Appeals for the Eighth Circuit, and transmit the same to the Clerk of that Court at St. Louis. In this transcript will be incorporated the following:

1. The two printed volumes used upon the hearing of the cases in the District Court, designated on the cover as "Evidence, Vol. 1" and "Evidence, Vol. 2", and the supplementary printed book containing additional evidence, also so used. We will provide you with a copy of these printed volumes to be used as a part of the transcript.

1a. This praecipe.

The transcript will also contain the following entries and papers in the College case:

2. Order overruling pleas and demurrers, July 16, 1912, entered in Record L. page 404.

3. Memorandum opinion upon overruling pleas and demurrers filed July 10, 1912. This was filed in both cases.

4. Three stipulations [file] June 2, 1913, numbered in pencil 23, 24, and 25. The one marked 23 was filed in both cases.

5. The replication.

6. Decree entered December 15, 1913, found in record i, page 155.

724 7. Opinion of the Court filed August 16, 1913. This opinion was rendered in both cases.

8. Stipulations as to appeals, filed May 11, 1914.

9. Petition for appeal, filed June 5, 1914.

10. One notice and invitation to join in appeal and declination. All the notices, invitations and declinations were in the same form.

11. Invitation to Missouri Valley College to join in appeal.

12. Stipulation as to death of defendant G. P. Grimes.

13. Assignment of Errors filed June 5, 1914.

14. Bond for Appeal.

15. Order Allowing Appeal.

16. Citation and acknowledgment of service thereof.

The transcript will also contain the following entries and papers in the general church case:

17. Order overruling pleas and demurrers, July 16, 1912, entered in Record L page 404.

18. The replication.

19. Order dismissing cause as to C. A. Wade, Elisha Hall, and Napoleon Irvin, December 6, 1913, found in Record L, page 151.

20. Final decree, December 15, 1913, found in Record L, page 157.

21. Stipulation as to appeals, filed May 11, 1914.

22. One notice and invitation to join in appeal, and declination. All the notices, invitations and declinations were in the same form.

23. Stipulation as to death of certain defendants.

24. Petition for appeal, filed June 5, 1914.

25. Assignment of Errors, filed June 5, 1914.

725 26. Bond for appeal.

27. Order allowing appeal.

28. Citation and acknowledgment of service thereof.

To this transcript please make one certificate covering both cases, as we are advised by the Clerk of the United States

mit Court of Appeals that this is the proper form of certificate for these cases.

ated this June 24, 1914.

ROBERT M. REYNOLDS
SANFORD B. LADD
Solicitors for appealing defendants in both cases.

We agree that the foregoing praecipe calls for all papers and record entries necessary for the determination of the appeal in the cases above mentioned.

FRANK HAGERMAN
VIRGIL V. HUFF
Solicitors for appellees in both cases.

Approved:
Arba S. VanValkenburgh
Judge.

Memorandum on Pleas and Demurrers to the Bills of Complaint by Van Valkenburgh, District Judge.

The first of these cases is commonly called the "College" case, and the second the "Church" case. Being of opinion that neither pleas nor demurrers should be sustained I shall indicate a little more than the reasoning upon which I have arrived at this conclusion.

First, respecting the pleas; when originally filed they were regarded as pleas to the jurisdiction of this court, although broad enough in their terms to serve as objections for want of indispensable parties. I think it clear that such objection can be raised by plea.

Decisions by the Supreme Court of the United States in *Elm, et al vs. Zarecor, et al.*, and *Sharpe, et al vs. Bonham, et al.*, rendered since the filing of these pleadings have somewhat narrowed the controversy arising thereunder. No point has been made against the jurisdiction of this court which would now seem to be established, at least until hearing on the merits, under the authority of the cases above cited, and *Watson vs. Jones*, 13 Wall. 679. Practically the sole question to be considered is whether from the face of the pleadings it appears that indispensable parties have been omitted, and, if so, whether the court should order them to be brought in, or whether it sufficiently appears that the jurisdiction would thereby be defeated, and that the suit should be dismissed at once, without useless circuitry and delay.

At the argument it was conceded that practically this same question, upon substantially identical pleadings, had
 727 already been submitted in an analogous case to Judge Sanford of the Middle District of Tennessee, (Kinne et al vs. Matthew, et al). Since then, Judge Sanford has overruled the plea, and has given his reasons therefor in a memorandum filed, which has been furnished to this Court. There, as here, the theory of defendants was that the omitted parties are necessary and indispensable parties, on the ground that it is alleged in the plea that they are in full possession, control and management of the property involved, and that where the object of a suit is to recover the possession of real or personal property, the one in possession is a necessary and indispensable party to that suit. Judge Sanford was of opinion that the bill did not allege that such parties were in possession of the church property, in any different sense, so far as possession is concerned, from that of the complainants and other church members for whose use and benefit as a class the complainants bring their suit. He was further of opinion, that the plea did not allege such fact in any manner essentially different from the bill. In other words, that the averments of the plea are not an averment of an independent fact but an averment as to an allegation of the bill. His conclusion was that the Court cannot, on such a plea, take judicial notice of the extent of the custody, control and management vested in such omitted parties by the church under its rules and ordinances.

Of course, it does not conclusively appear that the averments of the bill and plea in that case are substantially identical with those in the cases at bar, nor would this Court be bound to reach the same conclusion if they were. Nevertheless, I believe Judge Sanford's ruling to be sound, and to be applicable to the matters here under consideration.

We have here presented very important questions involving large and valuable church interests and properties, and the points raised by the plea go more or less directly to the real heart of the controversy. The nature of the interest, and character of the possession claimed, or asserted, depend upon the construction to be placed upon the church organizations involved, and their power over the church properties concerned. Judge Sanborn might well have said as he evidently felt, that these matters could be determined more satisfactorily and more beneficially to the litigants upon the merits than upon plea, and that a plea, in such case, should not be sustained except upon most clear and convincing authority.

It is true that the complainants by setting down the plea for argument admit for the purpose of contesting its sufficiency the truth of all facts stated in the plea. This does not mean, however, that all inferences from such facts stated are admitted. The rule is altogether similar to that in case of a demurrer to a bill alleging fraud and setting up the facts from which it is claimed to appear. The demurrer admits facts pleaded, but not the inferences of fraud asserted. Here the relationship of the parties concerned to the properties involved does not differ essentially in bills and pleas. It is evident that the exact nature of the possession held, and authority exercised by the parties claimed to be indispensable, is a matter to be determined upon final hearing rather than upon plea at the threshold of the controversy. In *Watson vs. Jones*, *supra*, the Court said:

"The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the Presbyterian body, are entitled to that use. They are liable to removal by the congregation for whom they hold this trust, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property, to the control of the session of the church.

"The possession of the elders, though accompanied with larger and more efficient powers of control, is still a fiduciary possession."

In *Helm, et al vs. Zarecor, et al*, *supra*, the Court said:

"The Board of Publication was incorporated merely as a convenient agency for the publishing work of the Cumberland Presbyterian Church. The charter clearly discloses [it-] character. The representative assembly of the Church was to fill the vacancies in its membership and control its conduct. It was an incorporated committee of publication, which lost none of its essential qualities as an agent of denominational service when it became an artificial person, clothed with power to hold property in a corporate capacity. * * * *

"It is thus evidence that the controversy transcends the rivalries of those claiming membership in the board and the assertion of rights inhering in that corporation itself. It embraces the fundamental question of the rights of these religious associations, said to be represented by the respective parties, to use and control the corporate agency, and to have the benefit in their denominational work of the corporate property. * * * *

"The Board is simply a title holder,—an instrumentality, the mastery of which is in dispute. But, as it is the holder of the legal title, the complainants seek a decree defining, in the light of proceedings alleged in the bill, the equitable obligations arising from the nature and purpose of the corporate organization.

"We are therefore of opinion that the corporation was properly made a party defendant."

So here, the corporation Missouri Valley College is made a party defendant. I can perceive no difference, from what is now before me, between the status of the college and that of the Board of Publication in the Helm case.

In Sharpe, et al vs. Bonham, et al, supra, the defendants, other than the trustees, filed a plea to the jurisdiction, alleging that the trustees "who are alleged to hold the legal title of the property described and involved, are indispensable parties complainant". This case was also a church case, analogous to that before us. The Court said:

"The case is not to be distinguished from Helm vs. Zarecor, 222 U. S. There the controversy arising from the same proceedings, having in view the union of the two religious bodies, related to the property and management of an incorporated committee of publication, or publishing agency, known as the Board of Publication of the Cumberland Presbyterian Church. It was held * * * * that the corporation was simply a title holder—an instrumentality, the mastery of which was in dispute; and that it was properly made a party defendant.

"As, in that case, the controversy embraced the fundamental question of the rights of the religious associations, said to be represented by the respective parties, to control the corporate agency and to have the benefit in their denominational work of the corporate property, so here the controversy is with respect to the control of the church property which the three trustees hold in trust. These trustees were not indispensable parties complainant as alleged in the plea, and, as mere title holders, they were properly made parties defendant."

So, with respect to the right of the complainants in the Church case to act as representatives of a class for the purpose stated in the bill, the question is one which cannot satisfactorily be decided at this stage of the proceedings. From the allegations in the bill, and not necessarily foreclosed by

the plea, as well as in the light of decided cases affecting the organization of the Presbyterian Church (Watson vs. Jones, 19 Wall. 679; Westminster Presbyterian Church vs. Trustees of the Presbytery of New York, 127 N. Y. Supplement 836), would seem that they may be proper representatives of the essential class. (Smith vs. Swarmstedt, 16 How. 288).

30 This also should not be finally determined until after further hearing.

Respecting the demurrers, it may be said that complainants claim that the allegation that the defendants are acting in concert was made to avoid the question of multifariousness and to justify putting the entire controversy and all property in one bill. If the claim of a federal question be asserted in good faith, this is sufficient to defeat a demurrer, although the issue may be decided against complainants on the merits. (Riverside, etc., vs. City of Riverside, et al, 118 Fed. 736-740).

Without entering upon a discussion of other matters raised in briefs and argument, I am persuaded that for the reasons stated, both pleas and [demurres] should be overruled, and defendants given until the next rule day of this court for answer. It is not intended, however, by this ruling to preclude defendants from availing themselves of the defenses urged by demurrer and plea, and the order will be without prejudice to the right to join them with other matter in an answer, or to present them in any other appropriate manner that may be desired. An order may be entered in accordance with the views here expressed.

31 (Opinion on Final Hearing.)

Mr. Frank Hagerman of Kansas City, Missouri, and Mr. Virgil V. Huff of Marshall, Missouri, Solicitors for Complainants, with whom are Mr. J. W. Suddath of Warrensburg, Missouri, Mr. W. M. Williams of Boonville, Missouri, and Mr. John M. Gaut of Nashville, Tennessee, of counsel.

Mr. W. C. Caldwell of Trenton, Tennessee, Mr. S. B. Ladd of Kansas City, Missouri, Mr. R. M. Reynolds of Marshall, Missouri and Mr. T. B. Allen of St. Joseph, Missouri, solicitors for Defendants.

32 Van Valkenburgh, District Judge.

These are cases brought by representatives of the Presbyterian Church in the United [—] of America to define the status of a large number of church properties in the State of Missouri. The first, commonly called the "Church Case",

is brought by the moderator and stated clerk, who are respectively chairman and secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, who act individually and as such officers and representatives of the members of said Presbyterian Church, against certain representative members of those who claim to form the Cumberland Presbyterian Church, to which church it is conceded that the property which is the subject of this litigation originally belonged. This property consists of numerous churches located in various parts of this state, and used for purposes of congregational worship.

The second suit is brought by the Synod of Kansas of the Presbyterian Church in the United States of America, a religious corporation organized and existing under the laws of Kansas, and also by certain individuals who are officers, members and representatives of the Synod of Kansas, a voluntary organization and part of said Presbyterian Church, against the Missouri Valley College, a corporation organized and existing under the laws of Missouri, and certain individual defendants as members, agents and representatives of what formerly was, and is by them still claimed to be the Missouri Synod of the Cumberland Presbyterian Church in the State of Missouri, a voluntary religious organization. The controversy arises out of the alleged re-union and union in 1900 of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church. The former church claims that by virtue thereof the property, church, educational and otherwise, of the Cumberland Church passed into the ownership and control of the united church represented by complainants. The defendants, and those whom they represent, deny the validity of the merger, and, consequently such resulting effect upon the property involved. The object of the bills is to quiet the title to all the property therein described in the united church, to-wit, the Presbyterian Church in the United States of America, fixing and determining the interest acquired therein by virtue of said alleged contract of merger; that the defendants, and all persons acting in concert with them, be enjoined from in any wise interfering with the use by complainants and the members of said church of any of said property in Missouri held by trustees for the benefit of the Cumberland Church at the time of said merger; that an account be taken of all the property in Missouri heretofore held in trust by the Cumberland Church, and the same be impressed with the rig

33 of the united church to the use of the same. In the college case and relief prayed is to this same effect, varying only to conform to the peculiar nature of the property therein under consideration.

This merger between the two churches, and the title to property claimed thereunder, has been the subject of decision by courts of last resort in twelve States: Alabama, Arkansas, California, Georgia, Illinois, Indiana, Kentucky, Mississippi, Oklahoma, Texas, Tennessee and Missouri; also by the District Court of the United States for the middle and western districts of Tennessee. Certain preliminary questions have been dealt with by the Supreme [-ourt] of the United States. In all of these jurisdictions except two, to-wit, the State Supreme Courts of Tennessee and Missouri, the contentions submitted have been resolved favorably to the complainants in this case. The Supreme Court of the United States, [however,] has not yet considered what may be termed the full merits of the controversy.

Exhaustive opinions in the several cases heretofore decided should make unnecessary, and, indeed, unwarranted, a similarly extended discussion in the case at bar. Further accumulative repetition, either of argument or citation, must impose but additional burden upon those seeking the light of precedent. The very great learning, ability, and industry of those who have voiced the judgment of their respective courts have left little that can be supplied with profit in support of the divergent views expressed. These views have been read and considered with the care and interest which their merit and the vast importance of the interests demand; and I shall content [myself] with announcing the conclusions I have reached with no more elaboration than is thought to be required for clearness of understanding. Even so, the discussion is unavoidably extended.

The Cumberland Presbyterian Church had its origin in 1810, through certain ministers of the Presbyterian Church who had separated themselves from the parent organization because of differences in doctrinal belief. The church grew until it embraced many churches, presbyteries and synods and a general assembly. From time to time throughout the succeeding century a re-union of the two churches was considered and desired by both associations. Their form of organization and methods of administration were practically identical. They were kept apart by what seemed to be distinctive and controlling differences in faith. In 1903, the Presbyterian Church, through the authoritative voice of its

general assembly, made such an explicit revision and interpretation of its doctrinal standards as in the opinion of the general assembly of both churches, removed all substantial differences between them and rendered their re-union not only possible, but desirable. In 1906 that union was declared to be effected. It did not meet with unanimous approval in the Cumberland Church. A strong minority opposed it from the outset, and still contests its validity; and it is claimed that the properties, church and educational of the Cumberland Church as it theretofore existed remain in and should be devoted to the use of those who still adhere to the separate organization and claim to be the legitimate representatives of the latter church.

In resolving the many questions presented, some of which meet us at the threshold of the case, it will aid materially if we first determine the essential character of Presbyterianism—and by this I mean also Cumberland Presbyterian—property and how it held, by and for whom, and in what such Presbyterian property rights consist. In this church the religious congregation or ecclesiastical body holding the property is but a subordinate member of the general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, and some supreme judicatory over the whole membership of the general organization. The local congregation is itself but a member of a much larger and more important religious organization, is under its government and control, and is bound by its orders and judgments. Therefore, when the property held by the church is that purchased or conveyed for the general use of the religious congregation, not devoted forever by the instrument which conveyed it nor by any special declaration of its owner to the support of any special religious decrees, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such a congregation. It does not belong to the presbytery or the synod, nor, in a strict sense, to the general assembly. It belongs to the church which is composed of its entire membership; that membership being governed and controlled by the organic law of the church, the administration of which is lodged in certain judicatories arising, in regular succession, to the general assembly or conference of last resort, embracing in itself legislative, administrative and judicial powers. The government of the Presbyterian Church is republican and representative in character. I

administration is vested not in the individual members, not in the congregations, but in the general assembly and the presbyteries; and the church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties.

The constitution of the United States and of the several states guarantees to the individual absolute independence of religious belief and worship. He need associate himself with no religious organization if he does not wish to do so, and he need remain identified with one no longer than he may desire; but when he does unite with a church, and becomes a member of that ecclesiastical body, he voluntarily surrenders his individual freedom to that extent. So long as he desires to avail himself of such a relationship, and to enjoy the privileges and benefits flowing from that association, he must conform to the laws by which it is governed. He cannot complain if its articles of faith be changed, nor if its property—in which he has no individual ownership—be transferred under constitutional forms; in such case, he has no personal or property rights which the civil courts can or should protect. Any other view would be entirely subversive of the very theory of organization. The church would be dissolved into a mere aggregation of individual views and theories. It is impossible that all men, or even many men, should exactly agree upon all the incidental details of standards or policies. It is the substance that is important; and it is essential that the power of decision in such matters should be lodged some where, and should be final.

It is otherwise where property is devoted forever by the instrument which conveys it, or by specific declaration of its owner to the support of any special religious dogmas or any peculiar form of worship. But, in this case, no such question is involved. The deeds to the various properties in the Church Case convey substantially in this form: "To trustees of the Cumberland Presbyterian Church of and their successors." It is broadly agreed by defendants that the conveyances of property to particular trustees or officers of a particular congregation of that church in its denominational name would be presumed and held to create a specific trust for the benefit of that congregation, and for the support therein of the distinctive doctrines of that church. If by this is meant that this form of words

creates a specific trust for the teaching of special religious dogmas, or a peculiar form of worship which shall be forever insusceptible of change or of being conducted by any legitimate successor in any other name, I am unable to agree with counsel for defendants. The grant is general in its nature and so long as any existing religious congregation can be ascertained to be that congregation or its regular or legitimate successor, it is entitled to the use of the property. Such is undoubtedly the overwhelming weight of decision both federal and state.

I have discussed this proposition at somewhat unusual length, because to my mind the conclusion reached has a controlling effect upon the solution of several other points in [controversy]. The question of essential parties to this litigation is immediately suggested. In overruling the plea to the jurisdiction, which were broadly construed as objections for want of indispensable parties, this court permitted defendant in their answer to avail themselves of the defenses urged by such pleas, and its order was made without prejudice to the right to join them with other matter in any appropriate manner that might be desired. In the memorandum filed I said that I could not on plea take judicial notice of the extent of the custody, control and management vested in such admitted parties by the church under its rules of ordinances; that the nature of the interest and character of the possession claimed, or asserted, depended upon the construction to be placed upon the church organizations involved, and their power over the church properties concerned. The evidence presented confirms me in the opinion that the properties of the church are held in the manner stated. (*Watson vs. Jones*, 13 Wall, 679; *Westminster Church vs. Trustees of New York Presbytery*, 127 N. Y. Supp. 836-850; 142 App. Div. 851).

736 Therefore, the plaintiffs are entitled to sue in the representative capacity as members of a class without the joinder of other parties, who, as mere title holders are not indispensable. (*Sharpe, et al vs. Bonham*, 224 S. 241; *Heln vs. Zarecor*, 222 U. S. 32). Independently of other considerations, diversity of citizenship confers jurisdiction.

The same reasoning applies to the college case. There, of abundance of caution, the Synod of Kansas, as an incorporated body, was joined with members of the voluntary association, who sued as members of a class. In my opinion the latter alone were sufficient if my views as to the character of church ownership be correct. The reports of the committee

tee on education to the Missouri Synod of the Cumberland Presbyterian Church in 1874, and the action of the synod thereon, disclose the reasons for the establishment of Missouri Valley College.

"The educational conflict of the day is between secular education, which regards man as simply a skilled producer, and a mere social animal, and Christian education in which the way of salvation is scripturally pointed out, and in which no instruction is given, which is opposed to the principles of the gospel. With the triumph of the latter, we may reasonably expect the church to prosper; with that of the former she must be circumscribed in her influence and usefulness.

"We therefore infer the imperative necessity of a college of high grade for the success of our church in this valley.

"We as a Synod are unable to maintain such an institution, as the history of the past clearly teaches.

"That you propose to the other Synods of Missouri, and such adjacent Synods as may not be officially connected with other institutions, to unite in establishing and maintaining a first class college to be under the joint control and management of said Synods."

The Synod adopted the suggestion made. For convenience the college was incorporated and upon the Synods of Missouri and Kansas were conferred supervisory control and visitorial power. The college did not indeed belong to the synods or either of them. It belonged to the general church of which they were subdivisions. The case, in this respect, falls directly within the doctrine announced in *Helm, et al vs. Zarecor*, 222 U. S. 32. The college as incorporated lost none of its essential qualities as an agent of denominational service when it became an artificial person, clothed with power to hold property in a corporate capacity. The following language of Mr. Justice Hughes has special application here:

737 "It is thus evident that the controversy transcends the rivalries of these claiming membership in the Board and the assertion of rights inhering in that corporation itself. It embraces the fundamental question of the rights of these religious associations, said to be represented by the respective parties, to use and control the corporate agency and to have the benefit in their denominational work of the corporate property.

* * * *

"The Board is simply a title holder; an [instrumentality], the mastery of which is in dispute. But, as it is the holder

of the legal title, the complainants seek a decree defining, in the light of the proceedings alleged in the bill, the equitable obligations arising from the nature and purpose of the corporate organization."

It is manifest that the bringing in of additional parties is desired, not for the purpose of a more complete determination of the controversy, but to defeat the jurisdiction of this court. Fortunately, however, this entire matter has been foreclosed by the decision of the Supreme Court in the cases cited.

The decision of these cases must rest upon the answers to be made to the following questions:

First. Had the Cumberland Church power, express, implied, or inherent, to unite with the Presbyterian Church?

Second. If so, was that power properly and legally exercised? And, as corollary to the latter question,

Third. Was there sufficient identity of faith to warrant union?

The first of these questions has been answered in the affirmative by all courts which have dealt with this controversy—the Supreme Court of Missouri alone excepted. The Supreme Court of Tennessee, which decided in favor of the Cumberland Church upon other grounds, has stated the rule with especial force and completeness. It said:

"The implied power of union of one Christian church with another, involving the surrender of the organization of one of them, exist, where there is no explicit pronouncement to the contrary in their constitution, religious standards, or forms of government. There is nothing in the constitution or organization of the Cumberland Presbyterian Church to
738 indicate that it was intended to be a perpetual organization, so that it had or has the power, if properly exercised, to unite with the Presbyterian Church in the United States of America."

Landrith, et al vs. Hudgins, et al, 121 Tenn. 556.

I think there can be no doubt of the correctness of this conclusion. To support it it is unnecessary to seek express authority in the constitution itself. It is not necessarily, nor even preferably, based upon the power conceded to be lodged in the general assemblies and presbyteries to amend and alter the standards of faith; nor that in the general assembly to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order

of the church. The power to unite with another church is inherent in sovereignty. It is repugnant to all conceptions of progress and development with the increased vitality and power for good in larger fields that flow therefrom, to hold that a church once formed must exist forever as a separate entity, under a separate name, and without practical verbal change in its declarations of faith. It is true probably that name and doctrinal standards may be altered and amended by procedure expressly indicated in the constitution, but here the specific thing thus provided for is not in terms attempted. It cannot on that ground, be insisted that some other action, clearly within the inherent powers of the church, and consummated by the sovereign powers of the church acting within the limits of necessarily implied authority, must be invalid. Unnecessary circuitry is not demanded. If, as an incident to this union, the name of the church is changed, and the verbiage of its confession of faith in some degree altered, it does not follow that the union is void.

It remains to be seen whether this union was regularly effected by the sovereign powers of the church. The Supreme Courts of Missouri and Tennessee were of opinion that it was not. All other courts thus far have decided that it was. The latter conclusion has been reached largely, though not exclusively, upon the principle that the Cumberland General Assembly, its court of last resort, had jurisdiction to decide this question, and decided in the affirmative, and that the civil courts are bound by this decision. The same supreme judiciary of the Cumberland Church also decided that the doctrinal standards of the two churches were in such substantial accord as to warrant the union. By the constitution the general assembly is given final power to decide in all controversies respecting doctrine and discipline. Concerning the Presbyterian Church in the United States—in this respect no different from the Cumberland Church—the Supreme Court in *Watson vs. Jones*, 13 Wall. 679-727, said:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or order have been decided by the highest of these church [judicatures] to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

It is unnecessary to prolong the discussion upon this phase. I think the question of regularity in effecting this union, and of substantial identity in the faith of the two churches was finally and conclusively determined by the general assembly of the Cumberland Church.

The Supreme Court of Missouri in *Boyles, et al vs. Roberts, et al*, 222 Mo. 613, held that property rights were here involved, and that in such case, civil courts do not register as their own the church decrees, even on matters of doctrine and of faith, but investigate them for themselves. And if, in determining the civil or property rights of the parties, it becomes necessary to investigate the articles of faith of a church and the written documents of its judicatories, that will be done, event to the extent of determining whether or not these judicatories have put the right meaning upon these articles. The same doctrine was announced by the Supreme Court of Tennessee in *Landrith vs. Hudgins*, *supra*. In order to maintain this proposition it was necessary to discredit the doctrine announced by the Supreme Court in *Watson vs. Jones*. The principles announced by Mr. Justice Miller for the latter court can be most [succin-ly], but comprehensively stated by quoting from the syllabus:

“Controversies in the civil courts concerning property rights of religious societies are generally to be decided by a reference to one or more of three propositions:

“(1st) was the property or fund which is in question, devoted by the express terms of the gift, grant, or sale by which it was acquired, to the support of any specific religious doctrine or belief, or was it acquired for the general use of the society for religious purposes, with no other limitations?

“(2nd) Is the society which owned it of the strictly congregational or independent form of church government, owning no submission to any organization outside the congregation?

“(3d) Or is it one of a number of such societies, united to form a more general body of churches, with ecclesiastical control in the general association over the members and societies of which it is composed?

740 “In the first class of cases the court will, when necessary to protect the trust to which the property has been devoted, inquire into the religious faith or practice of the parties claiming its use or control, and will see that it shall not be diverted from that trust.

"If the property was acquired in the ordinary way of purchase or gift, for the use of a religious society, the court will inquire who constitute that society, or its legitimate successors, and award to them the use of the property.

"In case of the independent order of the congregation, this is to be determined by the majority of the society, or by such organization of the society, as by its own rules constitute its government.

"In the class of cases in which property has been acquired in the same way by a society which constitutes a subordinate part of a general religious organization with established tribunals for ecclesiastical government, those tribunals must decide all questions of faith, discipline, rule, custom, or ecclesiastical government.

"In such cases where the right of property in the civil court is dependent on the question of doctrine, [discipline], ecclesiastical law, rule, or custom, or church government, and that has been decided by the [highest] tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it.

"The principles which induced a different rule in the English courts, examined and rejected as inapplicable to the relations of church and state in this country, and an examination of the American cases found to sustain the principle above stated."

As we have seen, the property in dispute was acquired for the general use of the body for religious purposes, with no other limitation. The church is of the associated and not of the congregational class. Therefore, the right of property involved is dependent on questions of doctrine, discipline, ecclesiastical law, rule, custom, and church government, which have been decided by the highest tribunal within the organization, and the civil courts will accept that decision as conclusive, and be governed by it in its application to the case before it. In other words, the property right here involved is an incident merely to questions within the jurisdiction of the Cumberland general assembly which have been finally decided by that court of last resort; and so, with but two exceptions, the Courts have held.

41 "It may be that cases may arise wherein the decision of the ecclesiastical tribunal is so palpably erroneous, and so manifestly in excess of its jurisdiction, that the civil

courts ought to decline to be bound thereby. Such, however, is not the case here."

Carothers vs. Moseley, 99 Miss. 671-678.

Such a situation was ably discussed in Mack, et al vs. Kime, et al, 129 Ga. 1-22-23. It was there said:

"There is a radical difference between an abandonment of all the teachings and doctrines of a church and a mere difference of opinion among the members of an organization as to what are the true doctrines and teachings of the organization. There may be cases where an entire abandonment will be attempted, and such intention would be clear and palpable. But the cases which are the most apt to arise are those which are upon the border line, when it is hard to determine, in the particular case, whether the action of the constituted authorities of the church is an abandonment of its original teachings or merely a judicial determination as to what are the true teachings of the church. The fact that there are cases lying so near to this border line is the reason that there are apparently conflicting decisions by the courts in this country as to when it is proper for the civil courts to interfere in the affairs of an ecclesiastical organization. It is true; in this class of cases, as in every case arising under the law, that the civil courts have generally laid down the correct rule, that they will not interfere with the affairs of an ecclesiastical organization, where the rights of property are involved, unless there has been a palpable attempt by the governmental authorities of the church to abandon altogether the teachings of the original organization."

The exception to the rule is thus stated in Brundage, et al vs. Deardorf, et al, (C. C.) 55 Fed. 839:

"The decisions of the supreme judicatory of a religious denomination of the associated class, having a constitution and governed by local, district, state, and national bodies, are not conclusive upon the courts, when they are in open and avowed defiance, and in express violation, of the constitution of such body."

In Ramsey, et al vs. Hicks, et al, 174 Ind. 428-442, the [principle] is thus stated:

"The recital of portions of the constitution of the Cumberland Church and the proceedings of its general assembly in this opinion was not for the purpose of reviewing the fact and determining for ourselves the correctness of the
742 conclusion reached, but chiefly to show that the question considered and decided was wholly ecclesiastical

that the proceedings were fairly regular and not founded upon a naked usurpation of authority. If church judicatories proceed palpably without jurisdiction, and their action is clearly ultra vires, neither the church membership nor the civil courts should respect their decisions; but when the matter in controversy is purely of ecclesiastical cognizance, and the church tribunal proceeds in manifest good faith under color of authority, its decision upon the question of its own jurisdiction, as well as upon subsidiary questions, is binding upon the civil courts."

The same Court in *Bentle vs. Ulay*, 175 Ind. 494, 496, has thus further elaborated its statement:

"That both bodies are representative in form and character, and not independent or congregational, is the controlling fact in the case. It is not denied, but is in fact conceded, that, upon all questions of doctrine, faith and discipline, the highest judicatory in each of the former organizations was the final arbiter. When the highest judicatory in each therefore agreed upon the unity of the doctrine and faith of each, the practice already being virtually the same, and this was followed by a submission of the question of union in the manner provided by the organic law of each organization for the submission of all questions, through the designated representatives, there necessarily resulted in fact, as well as in law, a union under the adopted name, and with it passed the title to all property not impressed with some other trust, such as might distinguish it."

See, also, *Brown vs. Clark*, 102 Tex. 323-333.

While it is thus established by undoubted weight of authority that the decision of the supreme judicatory of the Cumberland Church that a valid union was effected, both in form and in substance of doctrinal standards, is conclusive and must be accepted by the civil courts, it is unnecessary to base this conclusion wholly upon that ground. I think it conclusively appears, from what has preceded, that that church had inherent power to enter the union. In what body or bodies of the church was that power lodged? By whom is the sovereignty of the church properly exercised?

"Presbyterian church government is representative in form. Neither the constituent churches nor the members thereof legislate directly for themselves. The congregation of a church only elects the ruling elders who compose the church session, and the session in turn selects one of its mem-

743 bers as a representative in presbytery. The sovereign
ty of the church is exercised by the General Assembly
and the presbyteries acting together, the Assembly
proposing legislation and the presbyteries approving or dis-
approving. They act for the whole church, and the will of a
majority of all the presbyteries, acting with the General As-
sembly, expresses the will of all the particular churches. It
is essentially a government of the majority. All things which
are done by the church as a whole are, according to the letter
of the Constitution, done by the assembly and presbyteries
and all of the inherent powers of the church as a whole reside
in those representative bodies. They constitute the residu-
um of all the powers, executive, legislative and judicial, not
expressly lodged elsewhere by the Constitution. Therefore,
when the union was decreed by those bodies, the will of the
whole church was spoken."

Sanders vs. Baggerly, 96 Ark. 117-129-130-131;

See, also, Landrith vs. Hudgins, *supra*; Fussell vs. Hail, 134
Ill. App. 634; Committee of Missions vs. Pacific Synod of the
Presbyterian Church, etc., 157 Calif. 105.

But, it is insistently urged that even though the church had
the power to unite, that power was unconstitutionally and ir-
regularly exercised. The various steps in the procedure cov-
ered a period of years. A committee on fraternity and union
was appointed by the general assemblies of both churches.
They made a report, submitting a plan of re-union and union
of the two churches, together with concurrent declarations to
be adopted by their respective general assemblies meeting in
1904, and other recommendations. This plan of re-union and
union of the two churches was as follows:

"We believe that the union of the Christian Churches of
substantially similar faith and polity would be to the glory
of God, the good of mankind, and the strengthening of Chris-
tian testimony at home and abroad.

"We believe that the manifest providential development
and leadings in the two churches since their separation, to-
gether with present conditions of agreement and fellowship
have been and are such as to justify their re-union.

"Therefore, we cordially recommend to your respective Gen-
eral Assemblies, that the reunion of the Presbyterian Church
in the United States of America and the Cumberland Presby-
terian Church be accomplished as soon as the necessary steps
can be taken, upon the basis hereinafter set forth.

44 "1. The Presbyterian Church in the United States of America, whose General Assembly met in the Immanuel Church, Los Angeles, Cal., May 21st, 1903, and the Cumberland Presbyterian Church, whose General Assembly met in the First Cumberland Presbyterian Church, Nashville, Tenn., May 21st, 1903, shall be united as one church, under the name and style of the Presbyterian Church in the United States of America, possessing all the legal and corporate rights and powers which the separate churches now possess.

"2. The union shall be affected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

"3. Each of the assemblies shall submit the foregoing Basis of Union to its Presbyteries, which shall be required to meet on or before April 30th, 1905, to express their approval or disapproval of the same by a categorical answer to this question:

"Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church in the United States on the following basis: The union shall be affected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards; and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice.

"Each Presbytery shall, before the tenth day of May, 1905, forward to the Stated Clerk of the Assembly with which it is connected, a statement of its vote on the said Basis of Union.

"4. The report of the vote of the Presbyteries shall be submitted by the respective Stated Clerks to the General Assemblies meeting in 1905, and if the General Assemblies shall then find and declare that the foregoing Basis of Union has been approved by the constitutional majority of the Presbyteries connected with each branch of the church, then the same shall be of binding force, and both Assemblies shall take action accordingly."

45 This plan was submitted to the Presbyteries in the following form:

“Presbyterial Vote on Organic Union.

To the Presbytery:

Dear Brethren: By referring to the Minutes of the 18th meeting of the General Assembly (Pages 25, 55a, 30, 55, 48) you will see that, in the constitutional manner, the Assembly has submitted to the Presbyteries a proposition pertaining to the Reunion and Union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church, and you are asked to give due consideration to the same and to vote thereon. This proposition is to be put before the Presbytery in the following terms:

“Do you approve of the reunion and union of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal basis of the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, and of its other doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?”

“To this question the Presbytery is to give categorical answer. While the vote is taken simply upon this question your action thereon will mean the acceptance or rejection of the entire Plan, embracing the Basis of Union, Concurrent Declarations, and recommendations, without amendment or alteration in any part (See minutes pages 62a-65a).

“For the information of the Presbyteries, the Amendment to the Westminster Confession of Faith and the Brief Statement of the Reformed Faith have been printed in the Assembly Minutes. (See pages 72-77).

“The vote of the Presbytery is to be taken on or before April 30, 1905, and the accompanying certificate of the vote is to be returned to the Assembly’s stated clerk before the tenth day of May, 1905.

W. E. SETTLE, Moderator
J. M. HUBBERT, Stated Clerk.

Marshall, Mo., September 6, 1904.”

746 It is argued that the categorical question thus submitted for answer did not include the proposal that the churches should be united as one church under the name and style of the Presbyterian Church in the United States of America; that the presbyteries voted only upon the doctrinal

asis. Even if this were true, it would scarcely be sufficient to defeat the union as a whole. The name to be [born] by the united church was of secondary importance. It must be assumed that that church would have some name. If there were an entire change of name, that of the Cumberland Church would obviously be abandoned. If that of either of the churches entering the union were to be retained, it could hardly be anticipated that that of the parent church with its 1,300,000 communicants would give way to that of the smaller organization with less than 200,000. But I am of opinion, that the entire plan was submitted by this categorical question, and the circular letter which placed it before the presbyteries. In the letter this appears:

"To this question the presbytery is to give categorical answer. While the vote is taken simply upon this question, your action thereon will mean the acceptance or rejection of the entire Plan, embracing the Basis of Union, Concurrent Declarations, and recommendations, without amendment or alteration in any part (See Minutes pages 62a-65a).

Reference to pages 62a to 65a of the Minutes of the General Assembly of the Cumberland Church discloses the entire plan of reunion and union of the two churches, including the proposed adoption of the name and style of the Presbyterian Church in the United States of America as that of the united church. The practice of submitting long and involved propositions in abbreviated form by categorical questions to be answered by yes or no, is very common. As was well said in *Sanders vs. Baggerly*, supra, at page 139:

"Is it conceivable that the ministers and members composing the presbyteries did not understand, when they voted in answer to the question set forth in the letter of the moderator and stated clerk, that they were approving or disapproving the whole plan of union on the basis of taking the name and adopting the doctrinal and ecclesiastical standards of the Presbyterian Church? We think not.

47 "The [proceedings] were not conducted along technical lines, and should not be subjected to a technical scrutiny which would defeat the obvious intention of those who participated. The presbyters are presumed to have been men of at least average intelligence; and it is also to be presumed that they possessed themselves of all the facts concerning the whole plan of union and the effect of the votes which they were called to cast. Nothing, it seems to us, could be plainer than the manner in which the plan was submitted, and we are unwilling to say that it was or could have been

misunderstood by the members of the presbyteries. We say that the whole plan was submitted to and adopted by the presbyteries."

But it is further insisted that the doctrinal and ecclesiastical standards of the churches are so far at variance that no valid union was possible. To this, again, as a matter of independent decision, I cannot agree. When the Cumberland Presbyterian Church was founded, its first synod, which met in 1813, formulated and established a brief statement setting forth the points wherein Cumberland Presbyterians dissented from the Westminster Confession of Faith. They were as follows:

"1. That there are no eternal [reprobates.]

"2. That Christ died not for a part only, but for all mankind.

"3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit.

"4. That the Spirit of God operates on the world, or as co-extensively as Christ has made atonement, in such a manner as to leave all men inexcusable."

It may readily be conceded that the Westminster Confession of Faith, in terms, as well as in original construction, did not bear such interpretation; but the power to construe and declare its doctrinal standards was vested in the general assembly of the Presbyterian Church. Those standards were from time to time materially modified and altered. In 1900 the general assembly of the Presbyterian Church in the United States of America issued a declaratory statement, together with new chapters, in which, among other things, it was said:

"The Presbyterian Church in the United States of America does authoritatively declare as follows:

748 First, with reference to Chapter III of the Confession of Faith; that concerning those who are saved in Christ the doctrine of God's eternal decree is held in harmony with the doctrine of His love to all mankind; His gift of His Son to be the propitiation for the sins of the whole world, and His readiness to bestow His saving grace on all who seek it. That concerning those who [parish], the doctrine of God's eternal decree is held in harmony with the doctrine that God desires not the death of any sinner, but has provided in Christ a salvation sufficient for all, adapted to all, and freely offered in the Gospel to all; that men are fully responsible for

their treatment of God's gracious offer; that His decreeinders no man from accepting that offer; and that no man is condemned except on the ground of his sin.

"Second with reference to Chapter X, Section 3, of the Confession of Faith, that it is not to be regarded as teaching that any who die in infancy are lost. We believe that all dying in infancy are included in the election of grace, and regenerated and saved by Christ through the Spirit, who works when and where and how He pleases.

"The dispensation of the Gospel is especially committed to Him. He prepares the way for it, accompanies it with His persuasive power, and urges its message upon the reason and conscience of men, so that they who reject its merciful offer are not only without excuse, but are also guilty of resisting the Holy Spirit."

It is upon the basis of this declaration that the union was adopted. In my opinion, those utterances completely met all the points of difference between the two churches. It is true that the Confession of Faith was not re-written. It is true that some of the phraseology that had previously been regarded as objectionable was left unchanged. Nevertheless, all such standards are the subject of authoritative interpretation. Perhaps certain sections were left untouched for sentimental considerations; just as certain former Cumberland Presbyterians desire to retain the name "Cumberland" and their literal form of confession for similar reasons. It is the substance and spirit, and not the mere letter, which governs. It is true that some subsequent general assembly might change such declarations and construction; but this is possible in any general assembly with respect to any doctrinal standard; and such power is expressly recognized in the several constitutions. If I am wrong in my interpretation, it is but a [demonstration] of the soundness of the established rule that Judges of the civil courts should leave such questions to those more learned in ecclesiastical law, and more competent to decide them aright. The General Assembly of the Cumberland Presbyterian Church, in accordance with its constitutional powers, undertook to discharge this duty, and I concur in its decision.

Counsel for defendants urge that some fraud and misrepresentation appears on the part of those representing the Presbyterian Church, in that the effect of the vote in presbytery was mis-stated, and that a vote in assembly was unduly precipitated. This feature of the case received no attention at the oral argument. It does not seem to have been pre-



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sented in earlier cases in other jurisdictions. It probably has its origin in individual misunderstanding: sincere, no doubt, but scarcely justifying such serious consideration. As was intimated in a former decision, and is undoubtedly the general rule, the presence of fraud would justify a Court in taking cognizance of a question otherwise left for final determination to some other tribunal; but a charge of fraud against a great religious organization should not be entertained except upon clear proof. The evidence in this case does not measure up to that standard.

Finally, it is urged that the decision of the Supreme Court of Missouri in *Boyles vs. Roberts*, *supra*, should be binding upon this Court in the cases at bar. That decision cannot be accorded such force. There is identity neither in parties, subject-matter, nor relief prayed. Furthermore, a single case cannot establish a rule of property, and that decision was rendered long after the rights of the parties under this union had accrued. (*Kuhn vs. Fairmont Coal Co.*, 215 U. S. 349, and cases cited). It is claimed, however, that a rule of property was established in Missouri by a consistent line of previous decisions. (*Watson vs. Carvin*, 54 No. 353; *Russie vs. Brazzell*, 128 No. 93; *Fulbright vs. Higginbotham*, 133 No. 676). The only principle laid down in these cases which could in any way be urged as a rule of property applicable to this case is that where property rights are involved, the civil courts will not be bound by the decisions of the ecclesiastical courts, even on matters of doctrine and faith. If this be a rule of property it must, to be effective here, constitute a rule of real property, and, as such, effect the rights of the parties, the mode of the transfer, and the solemnities which should accompany them. (*Suydan vs. Williamson*, 24 How. 427-423). This is not such a rule. It indicates merely a practice of the Missouri Courts which establishes no rights, modes, or [solemnities], but affects the procedure by which such rights may indirectly be determined. It applies moreover, if at all, to church property, and no other. The Presbyterian Church, and indeed, all other associated ecclesiastical bodies, owns property throughout the various states of the union. It has a code of ecclesiastical law, which is general and not local, and the interpretation thereof, and the fundamental nature of the organization, it would seem, are matters of general law not subject generally to conclusive local construction. In such cases, the federal courts will exercise their independent judgment: (*Swift vs. Tyson*, 16 Peters 1; *Burgess vs. Seligman*, 107 U. S. 20-33; *Bucher vs. Cheshire R. Co.*, 125 U. S. 55).

750 Kuhn vs. Fairmount Coal Co., 215 U. S. 439). However, the Supreme Court of Missouri in *State ex rel Watson vs. Farris*, et al, 45 No. 183, adopted the rule herein announced. The case of *Watson vs. Jones*, 13 Wall. 679, was based in part upon the authority of that decision, which is expressly cited. In such case, this Court would not feel at liberty to change the rule in any event, but is constrained to follow that laid down by the Supreme Court in *Watson vs. Jones*, supra. (*Pease vs. Peck*, 18 Howard 595-598.) We have here no case involving a state statute nor long established local customs having the force of law. State law, especially of this character, is not to be applied by United States Courts, when sitting as courts of equity, as rules of decision. (*Bucher vs. Cheshire R. Co.*, 125 U. S. 555; *Hichie's Eneye*, of U. S., Sup. Ct. Rep. Vol. 4, p. 1051). Entertaining, as I do, profound respect for the Supreme Court of this state, as well as for the able jurist who wrote the opinion in *Boyles vs. Roberts*, I am firmly of the conviction that the doctrine therein announced is in conflict with the great weight of authority, state and federal; and that it is founded upon a misapprehension of the true rule which should govern the civil courts in their treatment of decisions of ecclesiastical courts of last resort in cases such as are now before us.

The Cumberland Church separated from the mother church because of specific doctrinal differences. These differences have been removed. The Cumberland Church, from the outset, has cherished hopes of re-union, and has several times in the past century made and entertained overtures to that end. The title "Plan of re-union and union" significantly describes the attitude and feeling of the two churches. They had inherent power to re-unite; they made a reasonable and bona fide attempt to exercise this power, and I believe successfully. We should not demand from church judicatories the literal exactness and precision in matters of procedure that are expected and required in the civil courts under more technical rules of practice. The united church is better equipped to spread its doctrines and to advance the cause of civilization and religious education. This union was conceived and consummated with that worthy object in view. As indicated by the Supreme Court in *Helm vs. Zarecor*, this controversy transcends the rivalries of the contending parties. It embraces the fundamental question of the right of these religious associations to use and control and have the benefit of those agencies in their denominational work. It involves the

success or failure of an ambition century-old, that all those who have embraced substantially the tenets of Presbyterianism should work together with greater power and vitality for universal betterment. The case should receive a broad and liberal construction in harmony with this beneficent purpose.

It follows, from the conclusions reached, that in the Church Case the title to all the property therein described should be quieted in the Presbyterian Church in the United States of America; that the defendants, and each of them, and all other members of the former Cumberland Presbyterian Church, whom they represent, be enjoined from in any wise interfering with the use by complainants, and the members of the Presbyterian Church in the United States of America, of any of the property in Missouri therein described, held by trustees for the benefit of said Cumberland Church at the time of the union of said churches; that in the College Case it be adjudged that the defendants, except the Missouri Valley College, and all those claiming under and represented by them, have no right to the title in or to said real estate, and no rights or title, legal or equitable, to said trust funds therein described, and no right to the control or possession thereof; that said Missouri Valley College be adjudged to be vested with the legal title to said property, real and personal, in trust, for the benefit of complainants and those whom they represent, to-wit: the Presbyterian Church in the United States of America; that the defendants, except said Missouri Valley College, and every person claiming under and represented by them, be forever estopped, debarred and enjoined from in any way claiming or asserting any title thereto, or in any way interfering with or attempting to interfere with, manage, or control, said property; all to the effect that said Presbyterian Church in the United States of America may use and control, and have the benefit of, said properties in its denominational work.

Decrees may be prepared in conformity with this opinion.

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(Clerk's Certificate to Transcript.)

United States of America—Sct.

I, John B. Warner, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a full, true and complete copy of the record, Assignment of Errors and all pleadings in the case in compliance with praecipe filed June 25, 1914, and made a part of this transcript, in the cases

of The Synod of Kansas of the Presbyterian Church in the United States of America, et al. vs. Missouri Valley College, et al., No. 3540 and James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, et al., vs. Hugh Hayes, et al., No. 3546, as fully as the same appears on file and of record in this office. I further certify that the original citations in these causes are prefixed hereto and returned herewith.

Witness, my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 29th day of July, 1914.

[Seal U. S. Dist. Court, Western Division, Western District of Missouri.]

JOHN B. WARNER,
Clerk U. S. District Court.

Filed Jul- 31, 1914. John D. Jordan, Clerk.

And thereafter the following proceedings were had in said causes in the U. S. Circuit Court of Appeals, viz:

(Appearance of Messrs. S. B. Ladd and Robert M. Reynolds as Counsel for Appellants in Cause No. 4288.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 4288.

J. W. DUVAL et al., Appellants,
vs.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA et al.

The Clerk will enter my appearance as Counsel for the Appellants.

S. B. LADD.
ROBERT M. REYNOLDS.

Endorsed: Filed in U. S. Circuit Court of Appeals, Jul- 31, 1914.

(Appearance of Mr. Virgil V. Huff as Counsel for Appellees in Cause No. 4288.)

The Clerk will enter my appearance as Counsel for the Appellees.

VIRGIL V. HUFF.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sep. 25, 1914.

(Appearance of Mr. W. C. Caldwell as Counsel for the Appellants in Cause No. 4288.)

The Clerk will enter my appearance as Counsel for the Appellants.

W. C. CALDWELL.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sept. 26, 1914.

(Appearance of Mr. W. M. Williams as Counsel for Appellees in Cause No. 4288.)

The Clerk will enter my appearance as Counsel for the Appellees.
 W. M. WILLIAMS,
 Boonville.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sept. 26, 1914.

(Appearance of Mr. Frank Hagerman as Counsel for Appellees in Cause No. 4288.)

The Clerk will enter my appearance as Counsel for the Appellees.
 FRANK HAGERMAN.

Endorsed: Filed in U. S. Circuit Court of Appeals, Oct. 3, 1914.

(Order of Argument in Cause No. 4288.)

December Term, 1914.

THURSDAY, January 14, 1915.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Sanford B. Ladd and continued by Mr. Robert M. Reynolds for appellants and continued by Mr. Frank Hagerman for appellees, and the hour of adjournment having arrived further argument is postponed until tomorrow.

(Order of Submission in Cause No. 4288.)

December Term, 1914.

FRIDAY, January 15, 1915.

This cause having been called for further hearing, argument was resumed by Mr. Frank Hagerman for appellees and concluded by Mr. W. C. Caldwell for appellants.

Thereupon, this cause was submitted to the Court on the transcript of record from said District Court and the briefs of counsel filed herein.

(Opinion.)

United States Circuit Court of Appeals, Eighth Circuit, December
Term, A. D. 1914.

No. 4288.

J. W. DUVALL et al., Appellants,

vs.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE
UNITED STATES OF AMERICA et al., Appellees.

Appeal from the District Court of the United States for the
Western District of Missouri.

December Term, A. D. 1914.

No. 4289.

J. F. SHEPHERD et al., Appellants,

vs.

JAMES M. BARKLEY, Moderator, etc., et al., Appellees.

Appeal from the District Court of the United States for the Western
District of Missouri.

Mr. Sanford B. Ladd, Mr. Robert M. Reynolds and Mr. Walter
C. Caldwell, for appellants.

Mr. Frank Hagerman, for appellees.

Before Hook and Carland, Circuit Judges, and Amidon, District
Judge.

CARLAND, Circuit Judge, delivered the opinion of the Court.

These are appeals from decrees entered for the complainants in the above entitled actions which were brought to quiet the title to certain church property situated in the State of Missouri. Generally speaking the controversy is between the Presbyterian Church in the United States of America and certain persons claiming to represent what was formerly known as the Cumberland Presbyterian Church.

On May 24, 1906, the representatives of the Presbyterian Church and the Cumberland branch thereof, entered into an agreement by the terms of which it was substantially agreed that the two churches should be amalgamated, merged and united into one church by the name of the Presbyterian Church in the United States of America, which should take, hold, succeed to and possess all the legal, corporate and property rights and powers of the separate churches the same as if it were a continuance of each, and the ministers, officers and membership of the two separate churches should be that of the consolidated church, with the same force and to the

same extent as if the members of each church were admitted to and became members of the other. The consummation of this agreement started a conflagration of litigation only possible over family property. The agreement has been held valid in the following cases:

Federal Courts: *Sherard vs. Walton*, 206 Fed. Rep. 562; *Helm vs. Zarecor*, 213 Fed. Rep. 648; *Sharpe vs. Bonham*, 213 Fed. 648.

State Courts: Alabama, *Harris vs. Cosby*, 173 Ala. 81, 55 So. 231; Arkansas, *Sanders vs. Baggerly*, 96 Ark. 117, 131 S. W. 49; California, *Permanent Commission of Missions vs. Pacific Synod*, 157 Cal. 105, 106 Pac. 395; Georgia, *Mack vs. Kime*, 129 Ga. 1, 58 S. E. 184; Illinois, *First Presbyterian Church of Lincoln vs. First Cumberland Presbyterian Church of Lincoln*, 245 Ill. 74, 91 N. E. 761; *Fussell vs. Hail*, 233 Ill. 73, 84 N. E. 42, s. c. below 134 Ill. App. 620, 630; *Pancy Prairie Church vs. King*, 245 Ill. 120, 91 N. E. 776; *Pleasant Grove Congregation vs. Riley*, 248 Ill. 604, 94 N. E. 30; Indiana, *Ramsey vs. Hicks*, 174 Ind. 428, 91 N. E. 344, 92 N. E. 164; *Bentley vs. Ulay*, 175 Ind. 494, 94 N. E. 759; Kentucky, *Wallace vs. Hughes*, 131 Ky. 445, 115 S. W. 684; Mississippi, *Carothers vs. Moseley*, 99 Miss. 671, 55 So. 881; Missouri, *Hayes vs. Manning*; *Missouri Valley College vs. Guthrie*, decided December 1, 1914; Oklahoma, *First Presbyterian Church vs. Cumberland Presbyterian Church*, 34 Okla. 503, 126 Pac. 197; Texas, *Brown vs. Clark*, 102 Tex. 323, 116 S. W. 360.

That the several complainants are proper class representative of the Presbyterian Church, and that no indispensable defendants were omitted has been determined by the cases of *Smith vs. Swormstedt*, 16 How. 308; *Watson vs. Jones*, 13 Wall. 679; *Helm vs. Zarecor*, 222 U. S. 32; *Wheelock vs. First Presbyterian Church*, 119 Cal. 481; 1 Blackstone, 483; *Dartmouth College vs. Woodward*, 4 Wheat. 518; *Westminster Church vs. Trustees of New York Presbytery*, 127 N. Y. Supp. 836; *Free Church of Scotland Appeals*, L. R. App. Cas., 1904, pp. 515, 517; *Sharpe vs. Bonham*, 224 U. S. 241; *Bacon vs. Robertson*, 18 How. 480; *U. S. vs. Old Settlers*, 148 U. S. 427; *Wallace vs. Adams*, 204 U. S. 415; *American Steel & Wire Co. vs. Wire Drawers, etc.*, Unions 90 Fed. Rep. 598; *Revised Statutes of Mo.*, 1909, Section 2535. In regard to the plea of res adjudicata arising from the judgment in *Turk vs. Mitchell*, it seems that the decree entered below was without prejudice to the rights of the parties to the property of the Mt. Carmel Cumberland Presbyterian Church. Of this action of the trial court we do not think counsel can complain. Counsel for appellants frankly state that they relied largely in taking these appeals on the case of *Boyles vs. Roberts*, 222 Mo. 613. Since the appeals were taken this case has been overruled by the same court in *Hayes vs. Manning*, December 1, 1914. As the property in litigation is located in the State of Missouri we should regard the determination of the Supreme Court of Missouri as to the rights of the parties in this litigation as very persuasive.

Learned and able opinions have been written in all the cases cited wherein all that can be said for and against the validity of the con-

tract of union has been stated. In view of these decisions which constitute an overwhelming weight of authority we feel that no duty rests upon us to add anything to what has been said in the different opinions including the trial court in *Barkley vs. Hayes*, 208 Fed. 319, in which we fully concur.

The decrees appealed from are affirmed.

Filed April 18, 1915.

(Decree in Cause No. 4288.)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1914.

No. 4288.

J. W. DUVALL, A. W. GREEN, L. F. CLEMENS, S. H. McELVAIN,
J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton, and
Edwin W. Houx, Successor to G. P. Grimes, Deceased, Appellants,
vs.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE
United States of America, H. G. Mathis, R. Thompson, William
Foulkes, J. B. Larimer, Samuel Garvin, and Charles M. Tabler.

Appeal from the District Court of the United States for the Western
District of Missouri.

SATURDAY, April 17, 1915.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that The Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler have and recover against J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElvain, J. E. Eberts, B. F. Garst, G. W. Freeman, William Hinton, and Edwin W. Houx, successor to G. P. Grimes, deceased, the sum of twenty dollars for their costs herein and have execution therefor.

April 17, 1915.

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 4288.

J. W. DUVALL et al., Appellants,

v.

SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA et al., Appellees.

Petition for Rehearing.

Now at this day come J. W. Duvall et al., appellants in the above entitled cause, and respectfully move the court to grant a rehearing for the following reasons:

First. Because the scheme of union is unconstitutional, ultra vires, and void.

Its effect is to extinguish the jurisdiction of the Cumberland Presbyterian Church and to merge that organization, with its membership and property, under the jurisdiction of the Presbyterian Church; and such merger can only be accomplished by the voluntary assent of the membership of the Cumberland Church.

No authority exists in the General Assembly of the Cumberland Church, under the written constitution of that church, to accomplish such a result.

Second. The scheme of union between the two churches is prohibited by Sections 25 and 43 of the written constitution of the Cumberland Church.

Third. The Cumberland Church has a written constitution, by which the authority of the General Assembly is prescribed, and the members of that body may represent and bind the church and the members thereof only in those matters for which authority is given by such instrument, and only in the manner therein provided.

Fourth. The General Assembly of the Cumberland Church, in matters of union with their other denominations, as described by the constitution of that church, has a limited authority only.

It has no general authority. It is limited: 1. To making a union with ecclesiastical bodies. 2. With only such ecclesiastical bodies as are of like faith and order. 3. Only with such ecclesiastical bodies of like faith and order, by the reception of such bodies under its jurisdiction, or under the jurisdiction of the Cumberland Church.

The delegation of limited authority, in effect, prohibits the General Assembly from entertaining any union whatever, of a different character. The scheme of union in question here is not such as is authorized: 1. It is not with a body of like faith and order; the creeds and doctrines of the two churches are irreconcilably antagonistic, and likewise, the order, laws, rules and regulations of the two churches vary in important particulars. 2. Such body is not received under the jurisdiction of the Cumberland Church.

Fifth. The scheme of union in question violates Sections 5 and of the Bill of Rights of the State of Missouri, in that it violates the individual and personal rights of appellants, and requires them to become members of the Presbyterian Church involuntarily, and to involuntarily attend and support its system of worship.

Sixth. Any other scheme of union than that for which authority was delegated to the General Assembly by the Cumberland Church, is reserved to the membership of that church, and can only be authorized by the assent of such membership.

The local congregation within the church can only be merged into or united with another local congregation within the church with the consent of a majority of the members of such congregation. (Section 31, Constitution of the Cumberland Church.)

Seventh. The scheme of union in question is in conflict with the written constitution of the Cumberland Church.

Eighth. Because the court, in its opinion and judgment, failed to give effect to the written constitution of the Cumberland Church, as indicated in the previous paragraphs hereof; as did also the various courts, the opinions of which are cited with approval and followed by this court.

Ninth. Because the court, in its opinion and judgment, failed, as did also the various courts the opinions of which are cited with approval and followed by this court, to take into consideration the fact that such portions of the plan of union which referred to the legal, corporate and property rights of the Cumberland Church, and such portions as contemplated and required the extinguishment of the Cumberland Church and the merger of the same into the Presbyterian Church, were never submitted to the presbyteries of the Cumberland Church for their approval or rejection, but the validity of the same rests wholly upon the authority of the General Assembly.

Tenth. Because the court, in its opinion, as did also the various courts the opinions of which are cited with approval and followed by this court, relied largely upon the practical constructions claimed to have been made by the General Assembly of the Cumberland Church, of its power to form a union with other bodies, by entertaining propositions for unions with other church bodies in several instances prior to 1883. In doing so, the fact was overlooked that the constitution of the Cumberland Presbyterian Church was amended and changed in 1883 in particulars bearing upon the powers of the General Assembly in matters of union, and at the time of the constructions mentioned, prior to 1883, the constitution and the powers of the General Assembly thereunder were entirely different from what they were at the time of the proceedings in question in this case. And a number of the cases cited and relied upon in the opinion of the court also proceeded upon the theory that the authority of the General Assembly of the Cumberland Church to make the union in question, is supported by precedent from the practical constructions of its power in such matters made by the General Assembly of the Presbyterian Church. Such courts, however, overlooked the fact of the material variance between the constitution of the Cumberland Presbyterian Church since 1883, and the constitution of the Presbyterian Church. In the constitution of the Presbyterian Church, power is expressly given the General Assembly of that church, to correspond with other church bodies, upon such terms as may be agreed upon between it and such other bodies.

No such clause appears in the constitution of the Cumberland Church. No such clauses as appear in Sections 25 and 43 of the constitution of the Cumberland Church, limiting the authority of the General Assembly with reference to matters of union, and prohibiting it in the exercise of its power, appear in the constitution of the Presbyterian Church.

The court further overlooked the fact that the Presbyterian Church has never given any practical construction of any power under its constitution, enabling its General Assembly to surrender the jurisdiction of that church and merge it into some other body. It has never surrendered, but has always maintained its jurisdiction.

Eleventh. Because the court, in its judgment and opinion failed to consider the fact that the corporate complainant, the Synod of Kansas, is a corporation existing under the laws of the State of Kansas, and under its charter has authority only to acquire and hold property in that state, and does not have authority to acquire or hold property in the State of Missouri.

Twelfth. Because the court, in its opinion and judgment, failed to consider the fact that certain persons mentioned in defendant's answer are indispensable parties to this action and that they have been omitted from the same.

Respectfully submitted,

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for Appellants.

I, Robert M. Reynolds, of counsel for appellants herein, do hereby certify that in my judgment the foregoing petition for rehearing is well founded and that the same is not interposed for delay.

ROBERT M. REYNOLDS,
Of Counsel for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, June 15, 1915.

(Order Denying Petition for Rehearing in Cause No. 4288.)

May Term, 1915.

FRIDAY, July 9, 1915.

This cause came on this day to be heard upon the petition for rehearing, filed by Counsel for appellants.

On consideration whereof, it is now here ordered by this Court that said petition for a rehearing of this cause, be, and the same is hereby, denied.

July 9, 1915.

(Appearance of Messrs. S. B. Ladd and Robert M. Reynolds as Counsel for Appellants in Cause No. 4289.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 4289.

J. F. SHEPHERD et al., Appellants,

vs.

JAMES M. BARKLEY, Moderator, etc., et al.

The Clerk will enter my appearance as Counsel for the Appellants.

S. B. LADD.

ROBERT M. REYNOLDS.

Endorsed: Filed in U. S. Circuit Court of Appeals, Jul- 31, 1914.

(Appearance of Mr. Virgil V. Huff as Counsel for Appellees in Cause No. 4289.)

The Clerk will enter my appearance as Counsel for the Appellees.

VIRGIL V. HUFF.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sep. 25, 1914.

(Appearance of Mr. W. C. Caldwell as Counsel for Appellants in Cause No. 4289.)

The Clerk will enter my appearance as Counsel for the Appellants.

W. C. CALDWELL.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sep. 26, 1914.

(Appearance of Mr. W. M. Williams as Counsel for Appellees in Cause No. 4289.)

The Clerk will enter my appearance as Counsel for the Appellees.

W. M. WILLIAMS.

Endorsed: Filed in U. S. Circuit Court of Appeals, Sep. 26, 1914.

(Appearance of Mr. Frank Hagerman as Counsel for Appellees in Cause No. 4289.)

The Clerk will enter my appearance as Counsel for the Appellees.

FRANK HAGERMAN.

Endorsed: Filed in U. S. Circuit Court of Appeals, Oct. 3, 1914.

(Order of Argument in Cause No. 4289.)

December Term, 1914.

THURSDAY, January 14, 1915.

This cause having been called for hearing in its regular order argument was commenced by Mr. Sanford B. Ladd and continued by Mr. Robert M. Reynolds for appellants, continued by Mr. Frank Hagerman for appellees, and the hour of adjournment having arrived further argument is postponed until tomorrow.

(Order of Submission in Cause No. 4289.)

December Term, 1914.

FRIDAY, January 15, 1915.

This cause having been called for further hearing, argument was resumed by Mr. Frank Hagerman for appellees and concluded by Mr. W. C. Caldwell for appellants.

Thereupon, this cause was submitted to the Court on the transcript of record from said District Court and the briefs of counsel filed herein.

(Opinion.)

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit, in cause No. 4289, Shepherd, et al. vs. Barkley, Moderator, etc. et al., is omitted at this point for the reason that a copy thereof appears at page 736 of this transcript.

(Decree in Cause No. 4289.)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1914.

No. 4289.

J. F. SHEPHERD, N. LOGAN, W. H. BILLINGS, A. M. TODD, L. M. Reese, Charles O. Nall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnson, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybiel, Laura Cook (Wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McIlvain, James Davis, J. Thomas Jones, and James E. Eberts Appellants,

vs.

JAMES M. BARKLEY, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the

Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly of the Presbyterian Church in the United States of America, Individually and as Such Officers and Representatives of the Members of the Presbyterian Church in the United States of America.

Appeal from the District Court of the United States for the Western District of Missouri.

SATURDAY, April 17, 1915.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed with costs; and that James M. Barkley, Moderator, etc., and others named as appellees in the citation, have and recover against J. F. Shepherd and others named as appellants in the citation, the sum of twenty dollars for their costs herein and have execution therefor.

April 17, 1915.

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 4289.

J. F. SHEPHERD et al., Appellants,

v.

JAMES M. BARKLEY, Moderator, etc., et al., Appellees.

Petition for Rehearing.

Now at this day come J. F. Shepherd et al., appellants in the above entitled cause, and respectfully move the court to grant a rehearing herein for the following reasons:

First. Because the scheme of union is unconstitutional, ultra vires, and void.

Its effect is to extinguish the jurisdiction of the Cumberland Presbyterian Church and to merge that organization, with its membership and property, under the jurisdiction of the Presbyterian Church; and such merger can only be accomplished by the voluntary assent of the membership of the Cumberland Church.

No authority exists in the General Assembly of the Cumberland Church, under the written constitution of that church, to accomplish such a result.

Second. The scheme of union between the two churches is prohibited by Sections 25 and 43 of the written constitution of the Cumberland Church.

Third. The Cumberland Church has a written constitution, by which the authority of the General Assembly is prescribed, and the members of that body may represent and bind the church and the

members thereof only in those matters for which authority is given by such instrument, and only in the manner therein provided.

Fourth. The General Assembly of the Cumberland Church, in matters of union with other denominations, as described by the constitution of that church, has a limited authority only.

It has no general authority. It is limited: 1. To making a union with ecclesiastical bodies. 2. With only such ecclesiastical bodies as are of like faith and order. 3. Only with such ecclesiastical bodies of like faith and order, by the reception of such bodies under its jurisdiction, or under the jurisdiction of the Cumberland Church.

This delegation of limited authority, in effect, prohibits the General Assembly from entertaining any union whatever, of a different character. The scheme of union in question here is not such as is authorized: 1. It is not with a body of like faith and order; the creeds and doctrines of the two churches are irreconcilably antagonistic, and likewise, the order, laws, rules and regulations of the two churches vary in important particulars. 2. Such body is not received under the jurisdiction of the Cumberland Church.

Fifth. The scheme of union in question violates Sections 5 and 6 of the Bill of Rights of the State of Missouri, in that it violates the individual and personal rights of appellants, and requires them to become members of the Presbyterian Church involuntarily, and to involuntarily attend and support its system of worship.

Sixth. Any other scheme of union than that for which authority was delegated to the General Assembly by the Cumberland Church, is reserved to the membership of that church, and can only be authorized by the assent of such membership.

The local congregation within the church can only be merged into or united with another local congregation within the church with the consent of a majority of the members of such congregation. (Section 31, Constitution of the Cumberland Church.)

Seventh. The scheme of union in question is in conflict with the written constitution of the Cumberland Church.

Eighth. Because the court, in its opinion and judgment, failed to give effect to the written constitution of the Cumberland Church, as indicated in the previous paragraphs hereof; as did also the various courts, the opinions of which are cited with approval and followed by this court.

Ninth. Because the court, in its opinion and judgment, failed, as did also the various courts the opinions of which are cited with approval and followed by this court, to take into consideration the fact that such portions of the plan of union which referred to the legal, corporate and property rights of the Cumberland Church, and such portions as contemplated and required the extinguishment of the Cumberland Church and the merger of the same into the Presbyterian Church, were never submitted to the presbyteries of the Cumberland Church for their approval or rejection, but the validity of the same rests wholly upon the authority of the General Assembly.

Tenth. Because the court, in its opinion, as did also the various courts the opinions of which are cited with approval and followed by this court, relied largely upon the practical constructions claimed

to have been made by the General Assembly of the Cumberland Church, of its power to form a union with other bodies, by entering propositions for unions with other church bodies in several instances prior to 1883. In doing so, the fact was overlooked that the constitution of the Cumberland Presbyterian Church was amended and changed in 1883 in particulars bearing upon the powers of the General Assembly in matters of union, and at the time of the constructions mentioned, prior to 1883, the constitution and the powers of the General Assembly thereunder were entirely different from what they were at the time of the proceedings in question in this case. And a number of the cases cited and relied upon in the opinion of the court also proceeded upon the theory that the authority of the General Assembly of the Cumberland Church to make the union in question, is supported by precedent from the practical constructions of its power in such matters made by the General Assembly of the Presbyterian Church. Such courts, however, overlooked the fact of the material variance between the constitution of the Cumberland Presbyterian Church since 1883, and the constitution of the Presbyterian Church. In the constitution of the Presbyterian Church, power is expressly given the General Assembly of that church, to correspond with other church bodies, upon such terms as may be agreed upon between it and such other bodies. No such clause appears in the constitution of the Cumberland Church. No such clauses as appear in Sections 25 and 43 of the constitution of the Cumberland Church, limiting the authority of the General Assembly with reference to matters of union, and prohibiting it in the exercise of its power, appear in the constitution of the Presbyterian Church.

The court further overlooked the fact that the Presbyterian Church has never given any practical construction of any power under its constitution, enabling its General Assembly to surrender the jurisdiction of that church and merge it into some other body. It has never surrendered, but has always maintained its jurisdiction.

Eleventh. Because the court, in its opinion and judgment, failed to consider the fact that the properties in question are local properties, titles to which are held under deeds of conveyance by local trustees, in trust for the use of the members of the local congregations, and that the complainants were not members of any such congregations, and had no interest in any of the same.

Twelfth. Because the court, in its opinion and judgment, failed to consider the fact that certain persons mentioned in defendants' answer are indispensable parties to this action and that they have been omitted from the same.

Respectfully submitted,

ROBERT M. REYNOLDS,
SANFORD B. LADD,
Solicitors for Appellants.

I, Robert M. Reynolds, of counsel for appellants herein, do hereby certify that in my judgment the foregoing petition for rehearing is well founded and that the same is not interposed for delay.

ROBERT M. REYNOLDS,
Of Counsel for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, June 15, 1915.

(Order Denying Petition for Rehearing in Cause No. 4289.)

May Term, 1915.

FRIDAY, July 9, 1915.

This cause came on this day to be heard upon the petition for a rehearing, filed by counsel for appellants.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

July 9, 1915.

(Petition for and Order Allowing Appeal to Supreme Court U. S.)

To the Honorable Willis Van Devanter, Associate Justice of the Supreme Court of the United States:

Your petitioners are appellants in the consolidated causes entitled J. W. Duvall, et al., appellants, vs. The Synod of Kansas of the Presbyterian Church in the United States of America, et al., appellees, No. 4288, and J. F. Shepherd, et al., appellants, vs. James M. Barkley, Moderator, etc., et al., No. 4289, in the United States Circuit Court of Appeals, Eighth Circuit, in which causes judgment was rendered on, to wit, July 9, 1915, affirming the final decree of the District Court of the United States for the Western District of the State of Missouri passed by said last named court in said consolidated causes. Printed copy of the transcript of record of said causes in said Circuit Court of Appeals, together with the opinion of the said District Court and said Circuit Court of Appeals, accompany this petition and are hereby made a part hereof.

Your petitioners pray for an appeal from the said judgment of said Circuit Court of Appeals to the Supreme Court of the United States upon the following grounds:

These are not cases in which the decree of the Circuit Court of Appeals is made final; on the contrary, they are cases wherein the jurisdiction of the District Court was not dependent entirely upon the opposite parties to the suit being citizens of different states, but was dependent also, and was invoked upon the further ground that the suits were suits arising under the Constitution of the United States, as appears on pages twelve, twenty-seven, thirty-two, five hundred nineteen and five hundred fifty-six of the printed record before the Circuit Court of Appeals.

Your petitioners further show that the amount or matter in controversy in each of these suits largely exceeds one thousand dollars besides costs.

The appellees in said Circuit Court of Appeals are James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers representatives of the members of the Presbyterian Church in the United States of America.

Your petitioners, who are appellants in said cases are J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Steward, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones, and James E. Eberts.

Assignment of errors is filed herewith.

WM. HENRY WHITE,

Attorney for Petitioners.

Appeal allowed and cost bond fixed at five hundred dollars.

June 16, 1916.

WILLIS VAN DEVANTER,

Associate Justice.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, July 6, 1916.

(Assignment of Errors on Appeal to Supreme Court U. S.)

The Circuit Court of Appeals erred:

1. In affirming the decree of the District Court.
2. In not reversing the decree of the District Court and remanding the cause with direction to dismiss the bills.
3. In refusing to consider or decide the issues pleaded as to the title of the properties involved under the trusts under which said properties are held in trust for the beneficial enjoyment of Appellants and in following the decision of the church judicatories without determining the merits of the said issues and in affirming the decree of the District Court depriving Appellants of the enjoyment of said properties, whereby Appellants are deprived of their property without due process of law, they are denied the equal protection of the law and their privileges and immunities as citizens of the United States are abridged contrary to the guaranties of the Constitution of the United States.

4. In affirming the decree of the District Court depriving Appellants of the enjoyment of property involved in the suit and held by their trustees in trust for their beneficial enjoyment, whereby they are deprived of their said property without due process of law and are deprived of the equal protection of the law in violation of the Constitution of the United States.

The Circuit Court of Appeals also erred in affirming the action of the District Court:

5. In finding the issues in favor of Appellees.

6. In adjudging and decreeing that the Union of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America was lawful and valid, and resulted in the formation of the United church under the name of the Presbyterian Church in the United States of America.

7. In adjudging and decreeing that said alleged united church possesses all the legal and corporate rights possessed before said alleged union by each of said former churches.

8. In adjudging and decreeing that said alleged union is binding upon the classes of persons represented by the personal plaintiffs, who affirm the validity of such union and that it is also binding upon the corporate plaintiffs, the Synod of Kansas of the Presbyterian Church in the United States of America, and that it is binding upon all classes of persons represented by the personal defendants who deny such validity, and that it is binding upon the corporate defendant, Missouri Valley College.

9. In adjudging and decreeing that the personal complainants are proper representatives of the class which affirm the validity of the union and that the personal defendants are proper representatives of the class which deny the validity thereof.

10. In adjudging and decreeing that the alleged union of 1906 the Kansas Synod of the Cumberland Presbyterian Church and the Kansas Synod of the Presbyterian Church in the United States of America were united into the Kansas Synod of the Presbyterian Church in the United States of America; that the Kansas Synod of said alleged united church was by and in pursuance of said act of union made and now is the owner and successor to all the rights, franchises and interests in and to all the property and endowments, real and personal, held in trust by the defendant corporation Missouri Valley College for the former Kansas Synod of the Cumberland Presbyterian Church and that it, the Kansas Synod of the Presbyterian Church in the United States of America, is entitled to all the use and control of said property formerly belonging to the Kansas Synod of the Cumberland Presbyterian Church by and under the Charter of said corporate defendant.

11. In adjudging and decreeing the title to said rights, franchises, interests, property and endowments, real and personal, quieted in said Kansas Synod of the Presbyterian Church in the United States of America as against the personal defendants and those represented by them.

12. In adjudging and decreeing that the personal defendants, their agents and employees as well as those represented by said

defendants have no interest in the property mentioned in the bill of complaint.

13. In adjudging and decreeing that the defendants and each of them, their agents and employees and those represented by them be enjoined from using and controlling and attempting to use or control any of the properties held in trust by the corporate defendant, the Missouri Valley College and that they be enjoined from using and permitting the use and control of such properties of every kind and character, including personalty and surety records, by and for said alleged united church and such subordinate divisions thereof as is provided in said act of union respecting the franchises to said property formerly belonging to the Cumberland Presbyterian Church and the respective subdivisions thereof.

14. In adjudging and decreeing that the property mentioned in the bill of complaint is held by the corporate defendant, the Missouri Valley College, for the use of the Presbyterian Church in the United States of America.

15. In adjudging and decreeing that the personal defendant should pay the costs of this suit.

16. In not adjudging and decreeing by its decree that no merger and union of the two churches had been accomplished, and erred in not adjudging and decreeing that for that reason the complainant's bill of complaint and the amendments thereto should be dismissed.

17. In overruling the plea of the defendants to the bill of complaint and the amendments thereto, which plea named certain persons and averred them to be necessary and indispensable parties to the suit, and erred in refusing to make the persons so named or any of them parties to the suit before any further proceedings were had and made therein.

18. In adjudging and decreeing that said alleged united church and the complainants and those alleged to be represented by them for it, are entitled to all or any of the property described in the bill of complaint and the amendments thereto.

19. In adjudging and decreeing the title to said properties quieted into and in said alleged united church and that said title is free of all right, title or claim of the defendants or those represented by them who deny the validity of said alleged union.

20. In adjudging and decreeing that the defendants and each of them, their agents, employees and representatives, and those represented by them, be enjoined from using or permitting to be used any of such church property for the benefit of any person, persons, congregation, church or association who or which does not recognize the validity of said alleged union, and in enjoining them from using and permitting to be used said property by and for said alleged united church.

21. In not adjudging and decreeing that the bill of complaint be dismissed for the reason that neither of the complainants possessed any such relation to or interest in the property, either as individuals or as officers or representatives of persons or a class of persons who did possess such an interest in the properties as entitled them or either of them to institute or maintain this action.

22. In adjudging and decreeing that said alleged united church and the complainant and those represented by him for it were entitled to the property in Henry County, Missouri, described as follows: One-half acre, commencing at a point 208 $\frac{1}{3}$ feet due north of the southeast corner of Section 10, Township 49, Range 46; thence north 208 $\frac{1}{3}$ feet; west 208 $\frac{1}{3}$ feet; south 208 $\frac{1}{3}$ feet; east 208 $\frac{1}{3}$ feet to the beginning, known as the Mt. Carmel Cumberland Presbyterian Church property described in the deed recorded in Book 84 at page 17 in the office of the Recorder of Deeds for said Henry County; and in not adjudging and decreeing that the decree rendered by the Circuit Court of Henry County, State of Missouri, on the 5th day of November, 1909, in a proceeding which involved the title to said property and the same controversy raised in this suit was res judicate and to be regarded as such. It erred in not adjudging and decreeing that the bill of complaint as to said property and as to the defendant, James G. Turk, be dismissed.

The Circuit Court of Appeals erred in affirming the decree of the District Court in which decree are the following errors:

23. The defendants averred that neither the corporate complainant nor any of the individual complainants nor any persons or corporations whom said individual complainants assert they represented, or any of them, have any such interest, legal or equitable, in the property of the Missouri Valley College described in the bill of complaint as entitles them or either of them to institute or maintain this action; and the District Court erred in not so adjudging and decreeing and in not dismissing the bill of complaint for that reason and in adjudging and decreeing that the complainants had any such interests and in rendering a decree in their favor.

24. The defendants averred that all the property described in the bill of complaint belongs to the Missouri Synod of the Cumberland Presbyterian Church and is and should be held by the Missouri Valley College in trust for the Missouri Synod of the Cumberland Presbyterian Church and the District Court erred in not so adjudging and decreeing and for that reason dismissing the bill of complaint.

25. The Synod of Kansas of the Presbyterian Church in the United States of America, the corporate complainant, has and can have by its charter no interest whatever, legal or equitable, in the property in controversy or in any schools, colleges or educational institutions outside of the State of Kansas or even any power or supervision over the religious or educational affairs of Presbyterian Churches or schools or colleges outside of the State of Kansas and the court erred in not so adjudging and decreeing and for that reason dismissing the bill of said corporate complainant.

26. The defendants, other than the Missouri Valley College, are the lawful members of the Board of Trustees of the College and as such entitled to the possession, management and control of the property described in the bill and whose title is vested in the corporate defendant and the court erred in not so adjudging and decreeing and in not dismissing the bill of Complaint for that reason.

27. The defendants averred that said alleged union and merger was invalid and without legal effect and that the equitable and

beneficial title to the property involved in this controversy after said alleged merger and union remained vested in the Missouri Synod of the Cumberland Presbyterian Church and that the right to possession, management and control thereof was, after said alleged merger and union, vested in the individual defendants Duvall, Harrison, Elberts, Freeman, Garse, Newman, Hinton, Grime, and Dameron, as member- of the Board of Trustees of said Missouri Valley College, they having been so appointed by the said Missouri Synod of the Cumberland Presbyterian Church in pursuance of the provisions of the charter of said corporate defendant; and that by said alleged merger and union, no title, equitable or beneficial and no right to the possession, use, control and management thereof, passed to or vested in the Kansas Synod of the Presbyterian Church in the United States of America or in any of its agents, officers or appointees; and the court erred in not so adjudging and decreeing by its decree and for that reason dismissing the bill of complaint.

28. The defendants averred that the bodies and judicatories of the Cumberland Presbyterian Church which voted in favor of said alleged merger and union had no power under the Constitution and laws of the Cumberland Presbyterian Church to take any action which would have the result of merging and uniting the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America; the action by said bodies and judicatories as a result of which a merger and union of the two churches is asserted was null and void and without binding effect upon any of the organizations or membership of the Cumberland Presbyterian Church; the court erred in ~~not so~~ finding, adjudging and decreeing and for that reason dismissing the bill of complaint and the amendments thereto.

29. By order of court made at the time of the overruling of defendant's plea that certain named persons were indispensable parties to the suit, defendants were given leave to set up in their answer the same or similar matters which, they did set up and that the same persons mentioned in their said plea were necessary and indispensable parties to the suit and the court erred in refusing to make such persons or any of them parties to the suit and erred in proceeding to a decree without having ordered that said person- or any of them be made parties.

30. The defendants averred that the adoption of the so called plan of union through the passage of what is known as the Templeton Resolution in May, 1904, was brought about by fraudulent methods and for that reason the action then taken in that regard was null and void and the court erred in not so adjudging and decreeing and for that reason dismissing the bill of complaint.

31. These defendants averred that neither of the complainants either as an individual or as an officer of the Presbyterian Church in the United States of America or as a representative of the members of the said Presbyterian Church in the United States of America, nor has the said James M. Barkley, complainant, as moderator of the general assembly or chairman of the executive commission of the general assembly of the Presbyterian Church in the United

States of America, nor has the said William H. Roberts, as stated clerk of the general assembly or as secretary of the executive commission of the general assembly of the Presbyterian Church in the United States of America any such interest in any of the property involved in this suit, real or personal, or in the matter in controversy herein, as entitles him to maintain this or any other action relating to the title to any of said property or the possession thereof; and the court should so have adjudged and decreed and the court erred in not so adjudging and decreeing and also in decreeing that they and each of them did possess such interest.

32. The defendants averred that this suit was not brought by the complainants on behalf of any other members of the Presbyterian Church and that they had no right to bring the same on behalf of such other members; that they are in no sense representative of any persons or class of persons possessing such an interest in any of the property involved in this suit as would entitle such persons or class of persons to invoke the aid of a court of equity for the protection of their interests in such property; and that the court erred in not so adjudging and decreeing and in decreeing that the complainants were such representatives and as such entitled to maintain this action.

33. The defendants averred that the title to the several properties described in the bill of complaint and its amendments and the answers thereto was vested in the persons or associations or organizations mentioned in the instrument which conveyed them, or created them, or under which they were held, as fully set forth in the answer; in each case the persons or classes of persons or organizations, purely local in the State of Missouri, possess the legal, equitable and beneficial interest therein; that no part of it belonged to the entire membership of the Cumberland Presbyterian Church or to the general assembly of that church nor did such entire membership nor said general assembly have any interest therein, legal, equitable or beneficial; and the court erred in so adjudging and decreeing that such property belonged to the entire membership of the church in the United States.

34. The defendants averred that the bodies and judicatories of the Cumberland Presbyterian Church which voted in favor of said alleged merger and union had no power under the constitution and laws of the Cumberland Presbyterian Church to take any action which should have the result of merging and uniting the Cumberland Presbyterian Church and the Presbyterian Church in the United States of America; that the action by said bodies and judicatories as a result of which a merger and union of the two churches is asserted was null and void and without binding effect upon any of the organizations or membership of the Cumberland Presbyterian Church; and that the court erred in not so finding, adjudging and decreeing and for that reason dismissing the bill of complaint and the amendments thereto.

35. The bill of complaint and its amendments were multifarious there was no proof whatever in the case of any conspiracy between the defendants or any of them as alleged in the bill; in the absence

of such proof, the court erred in rendering any decree in favor of the plaintiffs and against the defendants upon the bill of complaint so manifestly multifarious.

Wherefore, these appellants pray that the said final judgment and decree of the Circuit Court of Appeals be reversed and remanded with directions to the said Circuit Court of Appeals to reverse and remand the decree of the District Court with direction to the said District Court to dismiss the bill and the amendments thereto.

WM. HENRY WHITE,
Attorney for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals July 6, 1916.

(Bond on Appeal to Supreme Court, U. S.)

Know all men by these presents, That we, J. E. Eberts, as principal, and International Fidelity Insurance Co. as surety, are held and firmly bound unto James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers representatives of the members of the Presbyterian Church in the United States of America in the full and just sum of Five Hundred Dollars to be paid to the said James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers representatives of the members of the Presbyterian Church in the United States of America and each of their certain attorneys, executives, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 16th day of June, in the year of our Lord One Thousand Nine Hundred and Sixteen.

Whereas, lately at a final hearing in the Circuit Court of Appeals of the United States of America, Eighth Circuit, in a suit depending in said Court, between J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, E. C. Haines, J. S. Graybeil, Charles Rose, Laura

Cook (wife of John Cook), E. G. Steward, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts, who are appellants, and James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers representatives of the members of the Presbyterian Church in the United States of America, who are appellees, a decree was rendered against the above named appellants and the said appellants having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the above named appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James W. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Steward, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones, and James E. Eberts shall prosecute their appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES E. EBERTS, [SEAL.]
By WM. HENRY WHITE,
His Attorney.
INTERNATIONAL FIDELITY
INSURANCE CO., [SEAL.]
By GEO. F. PARKER,
Attorney-in-fact.

June 16, 1916.

Approved by

WILLIS VANDEVANTER,
*Associate Justice of the Supreme Court
of the United States.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, July 6, 1916.

UNITED STATES OF AMERICA, 88:

To James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal allowed by me in the following cases in the United States Circuit Court of Appeals, Eighth Circuit, in the causes of J. W. Duvall, et al., appellants, vs. The Synod of Kansas of the Presbyterian Church in the United States of America, et al., appellees, No. 4288, and J. F. Shepherd, et al., appellants, vs. James M. Barkley, Moderator, etc., et al., appellees, No. 4289, wherein J. F. Shepard, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts, are appellants, *plaintiff in error* and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Willis Van Devanter, Associate Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand nine hundred and sixteen.

WILLIS VAN DEVANTER,
*Associate Justice of the Supreme Court
of the United States.*

Copy received June 23, 1916, with the same effect but no more than if served by the proper officer upon appellees.

FRANK HAGERMAN,
Solicitor for said Appellees.

[Endorsed:] No. 4288. J. W. Duvall et al., Appellants, vs. The Synod of Kansas of Presbyterian Church, etc., et al. No. 4289. J. F. Shepherd et al., Appellants, vs. James M. Barkley, Moderator, etc., et al. Citation on Appeal to Supreme Court U. S. Filed July 6, 1916. John D. Jordan, clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein J. W. Duvall, et al., are Appellants and The Synod of Kansas of the Presbyterian Church in the United States of America, et al., are Appellees, No. 4288, and wherein J. F. Shepherd, et al., are Appellants and James M. Barkley, Moderator, etc., et al., are Appellees, No. 4289, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the twentieth day of July, A. D. 1915, a mandate was issued out of said Circuit Court of Appeals in each of said causes, directed to the Judges of the District Court of the United States for the Western District of Missouri.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this tenth day of July, A. D. 1916.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,

*Clerk of the U. S. Circuit Court of
Appeals for the Eighth Circuit*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled Jul- 10, 1916. J. D. Jordan.]

Endorsed on cover: File No. 25,471. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 641. J. F. Shepard, N. Logan, W. H. Billings et al., appellants, vs. James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, et al. Filed August 30th, 1916. File No. 25,471.

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Office Supreme Court, U. S.
FILED
MAR 11 1918
JAMES D. MAHER,
CLERK.

No. 257.

In the
Supreme Court of the United States
October Term, 1917.

J. F. SHEPHERD ET AL., *Appellants*,

VS.

JAMES M. BARKLEY, Moderator, etc., ET AL.,
Appellees.

BRIEF

For Appellees James M. Barkley, Moderator, and
William H. Roberts, Stated Clerk, Upon Appel-
lants' Motion to Amend Petition for and the
Order Granting an Appeal and Citation.

FRANK HAGERMAN,
Solicitor for said Appellees.



In the
Supreme Court of the United States
October Term, 1917.

J. F. SHEPHERD ET AL., *Appellants*,

VS.

JAMES M. BARKLEY, Moderator, etc., ET AL.,
Appellees.

No. 257.

BRIEF

For Appellees James M. Barkley, Moderator, and William H. Roberts, Stated Clerk, Upon Appellants' Motion to Amend Petition for and the Order Granting an Appeal and Citation.

1. The motion as now presented comes too late.

(a) Appellants in *this case*, (called the Church Case) *forty-two* in number, were defendants in the trial court. There was a trial there, upon the same evidence, of a companion case (called the College Case) by *other* plaintiffs against several

defendants, a part only of whom, five in number, were *also* defendants in *this* the Church Case. After *separate* decrees in each case, in favor of plaintiffs, *separate* appeals in *both* cases were prosecuted to the Circuit Court of Appeals for the Eighth Circuit, where there were *separate* affirmances, the *final* orders having been entered (Rec. 740, 746) July 9, 1915. The proceedings in each case were entirely separate, except that the cases were in the trial court consolidated *for trial* only. An appeal to *this* court was taken in *this* the Church Case only, none having been taken in the College Case. A short time ago appellants' brief on the merits of *this* case was served, and about February 14, 1918, that of appellees was printed and served. Appellees made (Appellees' Brief, pp. 1-5, 35) therein, the point that the cases were entirely *separate* and that there was here no appeal taken in the College Case, no citation therein issued or served nor any severance had as against the defendants therein who were not parties to *this* case. A motion to dismiss was filed by appellees. This counsel, in his acceptance of service, agreed should be heard with the merits. Thereafter, on February 23, 1918, appellants prepared herein an application to amend the petition for and order of appeal and the citation by inserting therein for the *first* time the names of those who were appellants and appellees in the College Case in the Circuit Court of Appeals. This counsel insist on *now* presenting, though *more than two years and a half* have elapsed since the final order below, so that it is now too late for a new

appeal or any severance as against those defendants who were not parties in this case or petitioners for any appeal or for the service of any citation upon the plaintiffs in the College Case who were not parties to the Church Case.

(b) Where, as here, more than two years and a half have elapsed since the judgment below became final, and there has been neither severance as against co-defendants nor citation to the plaintiffs, there can be no amendment. This has so often been decided (*Estes v. Trabue*, 128 U. S. 225, 32 L. Ed. 437; *Mason v. U. S.*, 136 U. S. 581, 34 L. Ed. 545; *Dolan v. Jennings*, 139 U. S. 385, 35 L. Ed. 217, 218; *Hardee v. Wilson*, 146 U. S. 183, 36 L. Ed. 933; *Missouri, etc., R. Co. v. Evans*, 175 U. S. 723, 44 L. Ed. 337) that it is needless to do more than cite the cases.

2. If there be color to the application, it should not be heard till the case on the merits is reached.

There is not, upon the facts, the slightest color for the motion. If there were, the question as to whether the College Case is here, was presented in appellees' motion to dismiss. That motion having by stipulation been continued till the final hearing, the *present* application should likewise be continued.

3. The motion to dismiss, heretofore filed, and agreed to be heard with the merits, and the argument (Appellees' Brief 1-5, 35) upon the point that only one case is here.

(I) The first ground of the motion to dismiss is:

1. "There were pending in the courts below two cases, one, *Barkley et al. v. Shepherd et al.*, commonly called the Church Case, and another, *Synod of Kansas et al. v. Duvall*, commonly called the College Case. The appeal taken was in the Church Case only."

Notice of this motion was by appellants thus accepted:

"Receipt of a copy of this motion acknowledged and service admitted. Same may be submitted with the case on the merits."

(II) In Appellees' Brief (pp. 1-5) the facts as to this matter were thus correctly recited.

(a) *Cases as originally instituted.*

Representatives of certain distinct interests of the Presbyterian Church of the United States, as plaintiffs, filed in the District Court *two* suits in equity against the representatives of separate interests of the Cumberland Presbyterian Church, as defendants, the nature and purpose of each of which suits was to declare and prevent a diversion of a trust in certain real estate and other property devoted to church and college purposes, the right to which inured to the Presbyterian representatives, respectively, by virtue of the pre-

vious union of the two churches. One of these cases (*Barkley v. Shepherd*), numbered 3540 (Rec. 34) in the District Court, is commonly known as the Church Case; the other (*Synod of Kansas v. Duvall*), there numbered 3546, as the College Case. * * * A trial upon the merits (*Barkley v. Hayes*, 208 Fed. Rep. 319; Rec. 721) resulted in *separate* decrees (Rec. 671, 687) for plaintiffs in each case, from which certain of the defendants in each case *separately* appealed (Rec. 676, 691) to the Circuit Court of Appeals, many others declining (Rec. 674, 675, 690) to join therein. The decrees were (Rec. 737, 742) there *separately* affirmed. (Opinion, Rec. 735, 737; 138 C. C. A. 217, 222 Fed. Rep. 669.)

(b) *The Church Case only has been brought here.*

(1) The cases (Bill in Church Case, Rec. 1-13; Amendment, 14-24; Second Amendment, 25; Bill in College Case, 27) were entirely *separate*. The plaintiffs in each were different; a *few* of the defendants in the Church Case were named as a *part* of the defendants in the College Case. The cases were in the District Court, though *never* consolidated, actually tried upon the *same* evidence. In *each* case there was a *separate* decree (Rec. 737, 743), a *separate* petition for (Rec. 676, 691), order of (Rec. *id.*) and bond (Rec. 683, 700) upon appeal, and a *separate* assignment of errors (Rec. 678, 693). In the Circuit Court of Appeals there was also in *each* case a *separate* decree of affirmance (Rec. 735, 742) and a *separate* petition for rehearing (Rec. 737, 742) *separately* denied (Rec. 738, 746). When it came to bringing

the case here, *new* counsel (Rec. 747) appeared. Lacking in familiarity with the record, he here filed, without title, *one* petition (Rec. 746, 747) which, in *general* words, gave the numbers and abbreviated titles of and asked for an appeal in *both* cases. It named *forty-two individuals* as appellants. This without specifying their relation, if any, to *either* case. Of these, five (J. W. Duvall, A. W. Green, L. F. Clemens, Samuel H. McElwain and J. E. Eberts) were, in fact, not only defendants in the Church (Rec. 1), but also in the College (Rec. 27) Case. The remaining thirty-seven were defendants (Rec. 1, 14, 25) not in the College, but *solely* in the *Church Case*. The *five* who were, in fact, defendants in *both* cases, did not, however, constitute *all* the defendants in the College Case. Of these there were (Rec. 27) originally *thirteen*. The appeal to the Circuit Court of Appeals was taken (Rec. 677) after certain severances, only by *J. W. Duvall, A. W. Green, L. F. Clemens, S. H. McElwain, J. E. Eberts*, B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx, successor to G. P. Grimes. The net result is of the *nine* appellants in the Circuit Court of Appeals, the five whose names are thus italicized are named as parties to *this* appeal. In plain words, B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx were, in the College Case, parties appellant below. There has been no severance as to them and they are not parties here, which fact alone would prevent a review of the College Case.

(2) There were (Rec. 692, 693) in the *Church Case*, after severances, a large number of appel-

lants in the Circuit Court of Appeals. The framer of the petition (Rec. 746-7) for the appeal *here* evidently copied in *haec verba*, these names from and as they appeared (Rec. 692-3) in the petition filed in the District Court for an appeal of the Church, as distinguished from the College Case. It was a mere accident that included in the list the five names of the five persons who were *also* defendants in the College Case. Mr. Justice Van-Devanter, in allowing the appeal, merely endorsed (Rec. 747) on the petition therefor the words "appeal allowed." So one must turn to that petition in order to determine who appealed and *against* whom the appeal was intended to be prosecuted. That shows a recital of an *intention* to prosecute an appeal in *both* cases. Yet it, as already shown, named as appellants those who, in the Church Case, appealed (Rec. 746-7) from the District Court to the Circuit Court of Appeals, and *not those* who also then appealed the College Case; it named, as *sole* appellees, James M. Barkley, Moderator, and William H. Roberts, Stated Clerk. The appeal bond (Rec. 753) so named them and none others, and was to secure them alone. They were not parties to the College Case (Rec. 27). They were *sole* plaintiffs in the Church Case (Rec. 1). No citation was ever issued to any plaintiff in the *College* Case. The only one (Rec. 755) ever issued was directed *solely* to the Moderator and Stated Clerk, who were the *sole* plaintiffs in the Church Case. The clerk has here docketed but *one* case. The only place where there appears even a claim that the *two*

cases are here is upon the printed cover of appellants' huge brief.

(3) The result is that if either case can be here reviewed, it is the Church Case only. No attempt has been made to bring the College Case up, nor was there a severance therein. (*Infra* Argument, Div. 1, subd. 2.)

(III) In the argument (Appellees' Brief, 35) it was said:

(a) From the facts already stated (*Supra*, Statement, Div. 1, pp. 1-8) it is apparent that no steps were taken to appeal the College Case. The Church Case *only* was appealed. The College Case is not, and has never been, here.

(b) Moreover, had there been an appeal in the College Case, it could not be now presented because, *first*, several co-defendants, *without severance*, were omitted as appellants (*Hardee v. Wilson*, 146 U. S. 179; *Beardsley v. Arkansas & L. R. Co.*, 158 U. S. 123) and, *second*, the plaintiffs therein were never made parties thereto nor any citation issued to or served upon them (*Castro v. U. S.*, 3 Wall. 46; *Alviso v. U. S.*, 5 Wall. 824; *Hewitt v. Filbert*, 116 U. S. 142; *Jacobs v. George*, 150 U. S. 415; *West v. Irwin*, 4 C. C. A. 401, 54 Fed. Rep. 419).

4. For the foregoing reasons the present application should be overruled, or at least should not be now considered coming, as it does, on the very eve of the hearing of the case on the merits.

Respectfully submitted,

FRANK HAGERMAN,
Solicitor for said Appellees.

In the
Supreme Court of the United States
October Term, 1917.

J. F. SHEPHERD ET AL., *Appellants*,

VS.

JAMES M. BARKLEY, Moderator, ET AL., *Appellees*.

No. 257.

MOTION TO DISMISS.

Now come the above named James M. Barkley, Moderator, and William H. Roberts, Stated Clerk, appellees, and specially appearing for the purposes hereof, move to dismiss the appeal herein for that:

1. There were pending in the courts below two cases, one, *Barkley et al. v. Shepherd et al.*, commonly called the Church case, and another, *Synod of Kansas et al. v. Duvall*, commonly called the College case. The appeal taken was in the Church case only.

2. This court has no jurisdiction of the appeal, because the judgment of the Circuit Court of Appeals was final and is not here reviewable, the case being one wherein jurisdiction was invoked

and existed solely because of diversity of citizenship.

FRANK HAGERMAN,
*Solicitor for Appellees James
M. Barkley, Moderator, and
William H. Roberts, Stated
Clerk.*

Receipt of a copy of this motion acknowledged
and service admitted. Same may be submitted
with the case on the merits.

CHAS. E. MORROW,
Solicitor for Appellants.

February 14, 1918.

JAMES M. RAYMOND, Moderator, et al.

Appeal from the United States District Court
Appeals for the Eastern District
(217, 222 Fed. Rep. 659) Appeal
District Court of the United States
for the Eastern District
Harrison (217 Fed. Rep. 34)

LEWIS F. RAYMOND, AND OTHERS
LEWIS RAYMOND, AND OTHERS
ROBERT F. RAYMOND, AND OTHERS

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In the
Supreme Court of the United States
October Term, 1917.

J. F. SHEPHERD ET AL., *Appellants*,

VS.

JAMES M. BARKLEY, Moderator, etc., ET AL.,
Appellees.

*Appeal from the United States Circuit Court of
Appeals for the Eighth Circuit (138 C. C. A.
217, 222 Fed. Rep. 669) Affirming the
District Court of the United States
for the Western District of
Missouri (208 Fed. Rep. 319).*

**BRIEF FOR APPELLEES, JAMES M. BARK-
LEY, MODERATOR, AND WILLIAM H.
ROBERTS, STATED CLERK.**

STATEMENT.

**1. Two cases were tried below, one of which
only is now here, even though it is not reviewable.**

(a) *Cases as originally instituted.*

Representatives of certain distinct interests of
the Presbyterian Church of the United States, as

plaintiffs, filed in the District Court *two* suits in equity against the representatives of separate interests of the Cumberland Presbyterian Church, as defendants, the nature and purpose of each of which suits was to declare and prevent a diversion of a trust in certain real estate and other property devoted to church and college purposes, the right to which inured to the Presbyterian representatives, respectively, by virtue of the previous union of the two churches. One of these cases (*Barkley v. Shepherd*), numbered 3540 (Rec. 34) in the District Court, is commonly known as the Church case; the other (*Synod of Kansas v. Duvall*), there numbered 3546, as the College case. They will be so referred to herein and the parties as they appeared below, i. e., plaintiffs and defendants, all references to the record being by the abbreviation "Rec." The ultimate controversy presented was the validity of the union, and it was of that transcendent nature said in *Helm v. Zarecor*, 222 U. S. 32, to rise above any individual claim to possession or title or any technical question which might arise in a suit thereover. A trial upon the merits (*Barkley v. Hayes*, 208 Fed. Rep. 319; Rec. 721) resulted in separate decrees (Rec. 671, 687) for plaintiffs in each case, from which certain of the defendants in each case appealed (Rec. 676, 691) to the Circuit Court of Appeals, many others declining (Rec. 674, 675, 690) to join therein. The decrees were (Rec. 737, 742) there *separately* affirmed. (Opinion, Rec. 735, 737; 138 C. C. A. 217, 222 Fed. Rep. 669.)

(b) *The Church case only has been brought here.*

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(2) There were (Rec. 692, 693) in the *Church* case, after severances, a large number of appellants in the Circuit Court of Appeals. The framer of the petition (Rec. 746-7) for the appeal *here* evidently copied in *haec verba*, these names from and as they appeared (Rec. 692-3) in the petition filed in the District Court for an appeal of the Church, as distinguished from the College, case. It was a mere accident that included in the list the five names of the five persons who were *also* defendants in the College case. Mr. Justice Vandeverter, in allowing the appeal, merely endorsed (Rec. 747) on the petition therefor the words "appeal allowed." So one must turn to that petition in order to determine who appealed and *against* whom the appeal was intended to be prosecuted. That shows a recital of an *intention* to

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(3) The result is that if either case can be here reviewed, it is the Church case only. No attempt has been made to bring the College case up, nor was there a severance therein. (*Infra* Argument, Div. 1, subd. 2.)

(c) *There is no jurisdiction here to entertain an appeal from the decree of the United States Circuit Court of Appeals.*

An appeal from the Circuit Court of Appeals is here prosecuted upon the theory that jurisdiction having been invoked both on the ground of diverse citizenship and a federal question, the judgment of that court was not final. This though the only

way in which the federal question was brought into the case, was by *anticipation* of a defense which defendants were expected to assert. This the latter did not do. Thereafter they expressly disclaimed any intention to assert any such defense and averred that jurisdiction could not be invoked on any such ground. Moreover, the issue was necessarily withdrawn from the case for that, prior to the submission to the Circuit Court of Appeals, the Missouri court overruled the case upon the doctrine of which the alleged federal question was solely predicated.

Each bill (Church case, Rec. 1; Amendment, 14; Second Amendment, 25; College case, 27) invoked jurisdiction upon the unquestioned ground of diverse citizenship. It also incidentally, unnecessarily and prematurely, by way of anticipating a defense, presented (Church case, Rec. 12, par. 13; College case, Rec. 32, par. 10) this very *doubtful* federal question: The defendants *claimed* that *Boyle v. Roberts*, 222 Mo. 613, established, as a Missouri rule of property, that a civil court can, regardless of any regulation or decision of the church authorities to the contrary, determine whether the creed or doctrine of a merged church is the same as that of its constituents, and if by it determined not to be, then the property is, without more, forfeited to those members who refuse to recognize the merger; this claim, *if sustained*, would violate the federal constitution, in that it would deprive church members of the right to contract, as between themselves, as to what should be the church creed and how, in case of dispute, that creed should be determined. When *thereafter* be-

fore (Rec. 734) the submission of the case to the Circuit Court of Appeals, *Boyle v. Roberts*, 222 Mo. 613, was expressly overruled (*Hayes v. Manning*, 263 Mo. 1; *Missouri Valley College v. Guthrie*, 263 Mo. 52) of course, the *claim* of defendants, as pleaded by plaintiff, no longer existed and the question went out of the case. Each answer (College case, Rec. 512, par. 1; Church case, Rec. 547, par. 1), also took the question away because it expressly denied that the case arose under the laws and constitution of the United States and averred that defendants did not make the claim, which the plaintiff said would, *when made*, bring the federal question into the case. Besides this, in the College case (Rec. 512, par. 1) it was averred the real controversy is, as hereinafter stated, *wholly* between citizens of Missouri; in the Church case (Rec. 546, par. 20) it was stated that "all of them (the defendants) are citizens of * * * Missouri." By stipulation (Rec. 668-669, 671, 672) at the trial the citizenship of plaintiffs in both cases and defendants in the College case were admitted as alleged. It thus appears that after the institution of the suit the allegations (Rec. 519, 559) of each bill as to the *supposed* federal question were specifically denied, and the alleged claim of defendants as to the effect of *Boyle v. Roberts*, 222 Mo. 613, expressly disclaimed. The plain result is that if, at any time, there were involved a federal question, it was not only disclaimed by defendants, but removed by the changed views of the state court and absolutely withdrawn by the defendants' disclaimer. If this view (Argu-

ment, Div. 1) be sound, there is no case here for review.

2. The general facts out of which the cases arose.

If, however, either one or both of the cases be reviewable here, then it becomes necessary to outline, as will be now done, the merits thereof.

The general facts upon which it has been held that there was power for the two churches to unite which had been so exercised as to be beyond review in the courts, have been in the different decided cases hereafter cited, time and time again stated and restated. Nothing more is now necessary than a general outline thereof as they appear from the record. The government of both churches, while representative or republican, and not monarchical in form or governed by a hierarchy, is not so democratic that the members of each particular congregation regulated its affairs or owned the property used by them. It consists of a number of graded judicatories through which the church power, policy and creed are established and enforced. Each congregation has a local organization, known as a particular church, which is governed by a Session composed of the minister in charge and the ruling elders elected for terms fixed by the congregation. Then, and with supervising control of the Session, comes the Presbytery, embracing a number of local churches within a certain district. The powers of this body are exercised by the ordained ministers in the district and one ruling elder from each of the

particular churches therein. This Presbytery is subordinate to and under the supervision of the Synod, which embraces not less than three presbyteries and consists of ministers and ruling elders from each particular church. The final supervising judicatory and the highest authority of the entire and general church is the General Assembly, a representative body composed of ministers and ruling elders selected by and from each of the presbyteries, to which all the minor bodies are subordinate. The head of the General Assembly is the Moderator, and the next in power is the Stated Clerk. The broad issue in these cases is, and the purpose in filing the bills was, to establish the validity of the union of the Presbyterian and Cumberland Churches, consummated in 1906, by the concurrent action of their General Assemblies. Such a union had long been in view and its propriety was for years previous thereto discussed generally by the members of both organizations. Prior to 1805 there was but one, the Presbyterian Church, the creed of which was the Westminster Confession of Faith. A controversy then arose between its members as to the doctrine of predestination. This controversy continued until 1810, when three ministers of the church in Tennessee, by an open rebellion, advocated a doctrine which resulted in the establishment of the Cumberland Church. This church in 1813 established three presbyteries and a synod. There was set forth the points upon which the new doctrine differed from certain chapters of the Westminster Confession of Faith. In 1829 the Cumberland General Assembly was estab-

lished, and in 1883 the church promulgated a revised constitution. In 1906 its membership aggregated 185,212, represented by 2,869 congregations, 1,514 ordained ministers, 114 presbyteries, and 17 synods. At the same time the Presbyterians numbered 1,300,000. In 1903 the Presbyterian Church revised its Confession of Faith so that the former theoretical differences in doctrine between it and the members who established the Cumberland Church were so far lessened, as was supposed to and as afterwards decided by both churches did bring the two into substantial harmony, thus removing any reason theretofore existing against reunion. Following this revision, the General Assemblies of the two churches in the same year appointed committees to negotiate a union between them. Those committees reported in favor thereof because there was no longer any material difference in their articles of faith and government, and recommended submitting the basis of union to the presbyteries for approval or disapproval. These reports were submitted to the General Assembly of each church in May, 1904, and adopted by the required majority. The vote of the Cumberland General Assembly was one hundred and sixty-two for to seventy-four against the union. The basis of union was then referred to and adopted by the presbyteries of each church. The vote of the Cumberland presbyteries was sixty for to fifty-one against, one approving conditionally, and two not voting. The joint report as submitted was to the effect that the union should be binding if and when approved by the General Assembly and Presbytery of each church.

The vote of the presbyteries was, in 1905, taken and reported to each General Assembly, which, after canvass, declared the result to be for the union. In May, 1906, the Cumberland General Assembly met at Decatur, Illinois, and adopted the report of the committee which had been appointed at the previous annual meeting in Fresno, California, and it then formally declared that the union between the Cumberland and Presbyterian Churches had been established, whereupon the Assembly finally adjourned to a meeting to be held in 1907. Immediately thereafter, a minority of the church members opposed to the union, disregarding the terms of the adjournment, met in Decatur, and, after a formal organization, adopted resolutions to rescind the action of the adjourned General Assembly. This dissenting body then arranged to meet one year later in Tennessee, at the place where the Cumberland Church had been originally founded. Since then this minority has claimed the union to be invalid and held annual meetings, claiming by reason of such alleged invalidity the Cumberland Church was still in existence as an independent body. Upon the basis of this claim, the minority has, wherever possible, retained possession of the church property and refused the use thereof to all others, especially to those former members who recognized the validity of the union. This has resulted in the extensive litigation hereinafter mentioned.

Both churches were general organizations, consisting of a system of gradation tribunals, by whom every question of every character, includ-

ing power, and method of its exercise, and the church creed, was to be finally decided. (Presbyterian Rec. 238-252, 269; Cumberland Rec. 251-265.) The form of government implied supreme power. The great Presbyterian Church is an organization which performs for the *whole* church certain acts through appropriate organs (Rec. 141) of which the local congregation, known as a particular church, is but a small part. The General Assembly represents "in *one body* all *particular churches* of the denomination" (Rec. 242) and constitutes "the bond of union * * * among *all* our churches" (Rec. 243). The revisory power of one tribunal over another may be voluntarily exercised without any complaint and without regard to there having been kept a record of the matter to be reviewed (Rec. 245). This church, through its different bodies, can, under the *express* provisions of its constitution, declare the terms of admission into its communion (Rec. 238) "receive members into the church" (id. 240) "*form or receive new congregations,* * * * order *whatever* pertains to the spiritual welfare" (id. 241) decide "all controversies respecting doctrine and discipline" (id. 243) and amend or alter its creed, form of government and constitutional provisions (id. 244). So that of the Cumberland Church practically made the same provisions, for it authorized the judicatories to "receive members" (id. 259) "concert the best measures for promoting the spiritual interests of the church" (id. 259) "unite or divide churches, * * * *form and receive new churches*" (id. 260) "superintend the entire affairs of the

church" (id. 262) "receive under its jurisdiction other ecclesiastical bodies whose organization is confined to the doctrine and order of this church" (id. 262) amend the faith of the church and any provision of its constitution (id. 263).

The Cumberland Church from the time of its organization, and up to and including the time of union, always recognized and acted upon the theory that it had power to unite with another church. In 1810, at the first meeting of its presbytery, a circular letter (Rec. 44-45) was framed and issued, expressing in no uncertain terms a wish and desire to reunite with the Presbyterian Church whenever it could be done on gospel principles. This was reiterated (Rec. 45-56) at the meeting in 1811. In 1812 it specifically (Rec. 46) declared "that this Presbytery has always been, and expects always to be, ready and willing for union with the general Presbyterian Church on Gospel principles." A resolution adopted by it in 1813 recited that "this Presbytery has made every reasonable effort to be reunited to the General Presbyterian Church." At the meeting of its General Assembly in 1860 a resolution was adopted affirming the readiness of the church "to reciprocate fraternal feelings with all Christians, but expressing more especially a desire for union with the great Presbyterian family, and to see all the branches thereof represented in one General Assembly." In 1867 its General Assembly negotiated with the Southern Presbyterian Church for a union therewith, and, without dissent, committees were appointed to formulate plans looking to the union. It failed, however, not because any

questions arose as to a lack of power, but solely because the Southern Church was unwilling to agree to the proposed modifications of the doctrinal statement. In 1873 it attempted to unite with the Presbyterian Church, U. S. A. In 1882 proceedings were begun for union with the Evangelical Reform Church, which were not consummated, but not on account of any question as to the power of the General Assembly. In 1885 a proposition was under consideration for a union with the Methodist Protestant Church (Rec. 56-58). In 1889 it united its Japan missions with those of the Presbyterians, such being the then church organizations in that country. In 1898 a judiciary committee of its General Assembly made (Rec. 58) this proposal for unions with other denominations:

"Whereas, all schemes and proposals for consolidation or for Church co-operation with other Churches are of such nature that they fall within the scope of the Assembly's Constitutional power; therefore, resolved, that no such proposals should be made to other Churches by any part of this Church nor, if made by other Churches, or any part thereof, should they be publicly considered by any part of this Church, until after the General Assembly shall have properly authorized such proceedings."

At none of these times was there any point made by anyone of a lack of power.

So the history of the Presbyterian Church, with a similar constitution, shows that it has always

asserted the inherent power to unite with other churches, and has frequently exercised same. The union of the Old and New School churches in 1869, and that of the Reformed Synod of the South, with the Southern Church, during the Civil War between the States, are illustrations of the exercise of this power in the absence of specific express *authority* therefor in the constitution. (22 Encyclopaedia Britannica, 11th Ed., p. 293; 16 International Encyclopedia, 364-372; 17 American Encyclopedia, under heading Presbyterian Church in United States of America; 6 American Church History Series, pp. 172-186; 9 New Schaff-Herzog Encyclopedia of Religious Knowledge, p. 227).

3. The validity of the union has been the subject of seemingly interminable litigation with practically a unanimous result.

After the Cumberland dissenters, consisting of a small minority of the original church, attempted, in 1906, to repudiate the union, seize the old organization and appropriate the church property, a flood of litigation was precipitated.

(a) Prior to the institution of these two suits, upon November 13 (Rec. 13) and December 8, 1909 (Rec. 33) the union had, upon October 22, 1909, been held invalid in Missouri by a closely divided court (*Boyles v. Roberts*, 222 Mo. 613, 121 S. W. Rep. 805) and in Tennessee over a dissent (*Landrith v. Hudgins*, 121 Tenn. 556, 120 S. W. Rep. 783) upon November 19, 1907. The

two courts differed upon the question of the *power* of the Cumberland Church to unite, the case in Missouri holding there was no such power, while that in Tennessee affirmed that it did exist, but had been improperly exercised because the creeds were different. The force of the Missouri case was much impaired by the vigor of a minority dissent. It has since been absolutely destroyed by the overruling of the case (*Hayes v. Manning*, 263 Mo. 1, and *Missouri Valley College v. Guthrie*, 263 Mo. 52). The federal court in Tennessee, after two opinions in the Supreme Court of the United States (*Helm v. Zarecor*, 222 U. S. 32; *Sharpe v. Bonham*, 224 U. S. 241) affirming jurisdiction and the right to determine the question, adopted (*Sherard v. Walton*, 206 Fed. Rep. 562; *Helm v. Zarecor*, 213 Fed. Rep. 648; *Sharpe v. Bonham*, 213 Fed. Rep. 660, 669) the views of a majority of the state cases and expressly denied the doctrine of *Landrith v. Hudgins*, 121 Tenn. 556, 120 S. W. Rep. 783, which had been reaffirmed in *Bonham v. Harris*, 125 Tenn. 452, 145 S. W. Rep. 169. This reaffirmance was, however, over a vigorous dissent (145 S. W. Rep. 173-174) by Judge Green. The latter, adopting an opinion (*Nance v. Busby*, 91 Tenn. 328, 18 S. W. Rep. 874) of Mr. Justice Lurton, when on the state bench, clearly showed that the majority opinion was not only against the weight of authority, but directly in the face of *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666, which had been *previously* expressly approved and followed by a then unanimous Tennessee court. Mr. Justice Lurton, after becoming United States Circuit

Judge, with the concurrence of his associates, followed and applied (*Brundage v. Deardorf*, 92 Fed. Rep. 214, 34 C. C. A. 304) the doctrine which he had previously announced in *Nance v. Busby*, 91 Tenn. 328, 18 S. W. Rep. 874. At the time (October 22, 1909) of the rendition of the final opinion in *Boyles v. Roberts*, 222 Mo. 613, the union had been upheld in Georgia (*Mack v. Kime*, 129 Ga. 1, 58 S. E. Rep. 184, August 9, 1907) Kentucky (*Wallace v. Hughes*, 131 Ky. 445, 115 S. W. Rep. 684, January 21, 1909) and Texas (*Brown v. Clark*, 102 Tex. 323, 116 S. W. Rep. 360, March 3, 1909). Since then, in addition to the opinions below of Judge Van Valkenburgh (208 Fed. Rep. 319; Rec. 721) and Judge Carland (138 C. C. A. 217, 222 Fed. Rep. 667; Rec. 735) the recent Missouri cases (*Hayes v. Manning*, 263 Mo. 1, and *Missouri Valley College v. Guthrie*, 263 Mo. 52) and the opinions (*Sherard v. Walton*, 206 Fed. Rep. 562; *Helm v. Zarecor*, 213 Fed. Rep. 648; *Sharp v. Bonham*, 213 Fed. Rep. 660) of Judges McCall and Sanford in Tennessee, seven states, making ten in all, have, in thoroughly reasoned opinions, and in the light of the previous Missouri and Tennessee state cases, upheld the union and denied their doctrine. These are the cases and the dates upon which decisions of these ten state courts were rendered. Alabama, *Harris v. Cosby*, 173 Ala. 81, 55 So. 231, Feb. 2, 1911; Arkansas, *Sanders v. Baggerly*, 96 Ark. 117, 131 S. W. 49, July 11, 1910; California, *Permanent Commission of Missions v. Pacific Synod*, 157 Cal. 105, 106 Pac. 395, December 24, 1909; Georgia, *Mack v. Kime*, 129

Ga. 1, 58 S. E. 184, August 9, 1907; Illinois, *First Presbyterian Church of Lincoln v. First Cumberland Presbyterian Church of Lincoln*, 245 Ill. 74, 91 N. E. 761, April 21, 1910; *Fussell v. Hall*, 233 Ill. 73, 84 N. E. 42, s. c. below 134 Ill. App. 620, 630, February 20, 1908; *Fancy Prairie Church v. King*, 245 Ill. 120, 91 N. E. 776, April 21, 1910; *Pleasant Grove Congregation v. Riley*, 248 Ill. 604, 94 N. E. 30, February 25, 1911; Indiana, *Ramsey v. Hicks*, 174 Ind. 428, 91 N. E. 344, 92 N. E. 164, March 31, 1910; *Bentley v. Ulay*, 175 Ind. 494, 94 N. E. 759, April 20, 1911; Kentucky, *Wallace v. Hughes*, 131 Ky. 445, 115 S. W. 684, January 21, 1909; Mississippi, *Carothers v. Moseley*, 99 Miss. 671, 55 So. 881, June 12, 1911; Oklahoma, *First Presbyterian Church v. Cumberland Presbyterian Church*, 34 Okla. 503, 126 Pac. 197, June 25, 1912; Texas, *Brown v. Clark*, 102 Tex. 323, 116 S. W. 360, March 3, 1909, reversing 108 S. W. 421, not officially reported.

(b) In the case at bar practically all the evidence offered by each party was, by stipulation, (Rec. 37, 38, 141, 451, 457) taken from "the printed abstract of record in *Boyles v. Roberts*, 222 Mo. 613," and "the bill of exceptions in *Hayes et al. v. Manning et al.*, and *Missouri Vallege College et al. v. Guthrie*," then pending in the Missouri Supreme Court and decided upon December 1, 1914 (263 Mo. 1, 52). Even this evidence was nearly all documentary and is the same as that recited in the cases from the ten states upholding the union, as necessarily must

have been so, since the chief counsel of the Cumberland Church (Hon. W. C. Caldwell) as shown by the official reports, took part in all the cases, including those below, excepting the last Illinois (245 Ill. 120) and Texas (102 Tex. 323) cases. There is, therefore, no probability of differentiating the facts in any of the cases. Hence Judge Van Valkenburgh's clear statement of facts and the contentions below, at final hearing (208 Fed. Rep. 319, Rec. 711-732) affirmed by that of Judge Carland (Rec. 735, 138 C. C. A. 217, 222 Fed. Rep. 669) and upon (Rec. 707-711) the pleas and demurrers, might well be adopted here. This is especially so because it is fortified by the various opinions of other jurisdictions and especially by the recent Missouri (*Hayes v. Manning*, 263 Mo. 1; *Missouri Valley College v. Guthrie*, 263 Mo. 52) and Tennessee (*Sherrard v. Walton*, 206 Fed. Rep. 562; *Helm v. Zarecor*, 213 Fed. Rep. 648; *Sharp v. Bonham*, 213 Fed. Rep. 660, 669) cases.

(c) There only remains the duty of making plain the particular cases now to be heard and noting in the argument some of the technical reasons suggested why plaintiffs should not recover on a claim which has been repeatedly upheld. To that end it is deemed proper to further plainly, but briefly, state the cases so there can be no possible room for any misunderstanding as to the facts and law applicable thereto.

4. Institution and result of the cases at bar.

(a) As already stated, the legality of the union was, upon October 22, 1909, denied in *Boyles v. Roberts*, 222 Mo. 613, a case involving only church property at Warrensburg, Missouri. Subsequently, there were instituted in the Circuit Court of Saline County, Missouri, *Hayes v. Manning*, 263 Mo. 1, and *Missouri Valley College v. Guthrie*, 263 Mo. 52, involving the church and college properties at Marshall, Missouri. In those cases the Supreme Court of the state, upon December 1, 1914, decided the union valid and expressly overruled *Boyles v. Roberts*, 222 Mo. 613. The cases at bar were filed in November and December, 1909, for the purpose of having determined by the lower court the validity of the union, regardless of the decision of the state court in *Boyle v. Roberts*, 222 Mo. 613, and making the final decision apply to all the property in Missouri which belonged to the Cumberland Church from the use of which was attempted to be excluded everyone who adopted the Presbyterian faith, or treated the union as valid. These cases were finally, in the District Court, decided (208 Fed. Rep. 319) upon August 16, 1913, in favor of the union, which decision was by the Circuit Court of Appeals (138 C. C. A. 217, 222 Fed. Rep. 669) affirmed.

(b) In the Church case the plaintiffs are, respectively, the Moderator and Stated Clerk of the General Assembly of the Presbyterian Church, being the chief officers thereof, and are suing as such and as representatives of a class consisting

of the members of the entire Presbyterian Church. Under the church constitution, the general supervising control and power as to all church property is vested in the General Assembly and the church at large is interested generally in all property, regardless of membership of any particular congregation. Since the original Presbyterian church organization, the final and controlling voice as to local church property has been so often, without objection, actually exercised by the General Assembly, that it may be said that everyone recognized its power. The Constitution declares it to be the authority which is to represent in *one* body *all* the particular churches of the denomination. The Cumberland Church, by what is known as the Baity resolution (Rec. 40), adopted at the time of the union, so recognized by directing the Synod, a body above the local church, to secure in the "*united church*" the title to all Cumberland property. The General Assembly itself expressly directed (Rec. 271-273) the institution of these particular suits to establish in the members of its church, their beneficial interest in all that part of the Missouri Cumberland property, from the use of which attempts were being made to exclude them. There were thirty-nine counties (Original Bill, Rec. 8-11; Amendments, Rec. 15, 25) in Missouri where the dissenters were enabled or were threatening to keep possession of the churches formerly belonging to the Cumberland Church. At the time of filing the bill they were actually using many of same for their own congregations, denying the validity of the union and the right of those of the

Presbyterian faith to such use even though they had been members of the Cumberland congregation before the union and became Presbyterians by reason thereof. The purpose of the bill was to determine the trust relation of the Presbyterian Church to these properties because of the union, and enjoin the dissenters from interfering with the use of the same by those of the united church. To this end there were made defendants, as representatives of a class of dissenters, members of the alleged Cumberland Church, consisting of those constituting the Synod and persons who had actual possession of or were claiming the properties, all of whom were acting together throughout the state in the assertion of the claim that the dissenters constituted the former Cumberland Church and were entitled to the sole use thereof.

(c) Prior to 1888 the Cumberland Church had organized and put in operation an educational commission to found a college to be under the control of several synods covering territory which included Missouri and Kansas. In June, 1888, the Missouri Valley College, a Missouri educational corporation, was formed to, and it did, take over the entire college property. Its affairs were as authorized by law, to be conducted under the supervision of voluntary associations known as the Missouri and Kansas Synods of the Cumberland Church, by thirteen trustees, ten of whom were always to be named by the Missouri and three by the Kansas Synod. This college has an endowment of nearly \$200,000, and a college

building and other property of a value in excess of that amount. In 1905, in contemplation of the union of the Presbyterian and Cumberland Churches in 1906, the Cumberland Synods of Missouri and Kansas passed appropriate resolutions (Rec. 39-40, 233-234) instructing the trustees to take any necessary steps to secure to the united church the benefit of the college property. This was done and from the time of the union the college has been operated by the thirteen trustees named by the Missouri and Kansas Synods, both of which recognized and became part of the united church. There were never any dissents in Kansas and no effort was ever made by dissenters to maintain any Kansas Synod. At a meeting (Rec. 485-488) of the Missouri Synod, October 16, 1906, certain of the dissenters formally withdrew from the body, announcing themselves as the only members because of the alleged invalidity of the union. Thereafter, upon October 18, 1906, this alleged Synod at its own meeting, resolved (Rec. 489-490) that because by following the united church the college trustees had renounced their church allegiance, it would, and did appoint ten persons as trustees of the college. At a later meeting (Rec. 491-492) this alleged Synod formally declared the Kansas Synod to be non-existent and that it and the trustees appointed by it as representatives of the true church, had the sole right to conduct the college and hold its property, and directed to be taken all steps, legal and otherwise, necessary to attain that end. In 1909 (Rec. 493-494) the same body again met and recited its fancied wrongs because the former

members of the Synod and former college trustees had followed and became part of the united church. There were again named ten trustees for the dissenters who, in 1910, reported (Rec. 495-496) they had on November 6, 1909, instituted (Rec. 498) in the Circuit Court of Saline County, Missouri, the case of *Missouri Valley College v. Guthrie*, 263 Mo. 52, for possession of the property. This was the first of two cases decided in Missouri in favor of the union and overruling the former opinion declaring its invalidity. The Kansas Synod was a voluntary subsidiary part of the Cumberland Church, and after the union continued as such of the united church. It, for the purpose of holding property in Kansas, in September, 1909, organized (Rec. 267-269) a Kansas corporation in the same name as the voluntary organization. This corporate body, together with individuals who are members of the voluntary body know as the Kansas Synod, in recognition of the validity of the union, and fairly representing a class, upon November 13, 1909, filed, by express authority of the Synod (Rec. 234) the bill (Rec. 27) in the College case, against the college corporation, a nominal party, and individuals who were members of the alleged Missouri Synod of the dissenters, and the trustees elected by them as fair representatives of that class known as dissenters. The purpose of the bill was to have decreed that the college title was for the benefit of that class represented by plaintiffs who became part of the united church, and that the individual defendants should be enjoined from claiming or asserting, because of the alleged invalidity of the

union, any title to or interest in or interfering with the management or control of the college property.

(d) In the College case, there was a decree (Rec. 672-673) to this effect: The union of 1906 was valid and binding upon the members of both churches who were as classes fairly represented by the individual plaintiffs and defendants; by virtue of the union the former synods became united with and part of the united church; no individual defendant and none of the class represented by him had any interest in the college property, and each one was enjoined from using or controlling or attempting to use or control any of same, it being held by the college for the benefit of the united church.

(e) In the Church case there was a dismissal without prejudice as to certain individual defendants (Rec. 687) and what is known as the Mt. Carmel Church, in Henry county (Rec. 688), and the Woodrow property (Rec. 688, 689) in Lawrence county. Otherwise, it was decreed: The union was valid and binding upon the members and officers of both churches, of whom both plaintiffs and defendants were fair respective representatives and the right, title and interest of the united church was quieted as against those who did not recognize the union, the defendants and those represented by them being enjoined from using or permitting to be used any of the property described in the bill for the benefit of those dissenting.

5. The bills, pleas and answers thereto.

(a) The theory of each bill is that in a controversy over property between great church voluntary organizations the proper representatives have a right of visitation which may in equity restrain a religious or educational trust to its proper sphere and confine it to the uses to which it ought to be put, especially where the state statute (R. S. Mo. 1909, Sec. 2505) enforceable here, authorizes anyone having *any* interest in real estate, in or out of his possession, to enforce his right against *anyone* in anywise claiming *any* interest adverse thereto. In such cases, it being manifestly impossible to have present all the members of the church, the claim of either plaintiff or defendant, can be properly presented by someone who is a fair representative of an entire class. So, the plaintiffs in the Church case, were the Moderator and Stated Clerk, the highest officers of the General Assembly, while those in the College case were the members of the Kansas Synod (including the corporation of the same name) who were denied any kind of recognition by the dissenters. The defendants in the Church case selected to represent the class were the chief officers and those actually in or threatening to take possession of the different church properties in the state from which the united church was excluded. In the College case, the defendants were members of the *alleged* Missouri Synod, who, as dissenters, were insisting upon the right to name and appoint trustees to manage the college property and trustees named by them.

(b) In the Church case a demurrer, though not now appearing in the record, seems to have been interposed to (1) that part of the bill which alleged that the various defendants were conspiring together to jointly assert their right to all alleged Cumberland Church property in the state, and (2) to paragraph 13 thereof, which, as one foundation to jurisdiction and of a right to future review by the Supreme Court, attempted to raise a federal question by pointing how and wherein the doctrine of *Boyles v. Roberts* (222 Mo. 613) impaired the rights guaranteed by the 14th Amendment to the Constitution of the United States.

(c) In the College case a demurrer, likewise not appearing in the record, seems to have been filed, but it was confined to paragraph 13 of the bill, stating a like federal question.

(d) In each case a plea, also not preserved, was filed. At the time of its filing it was, as stated by Judge Van Valkenburgh (Rec. 707) in the District Court, manifestly intended to be one to the jurisdiction, and similar to that filed in a Tennessee case, and thereafter held (*Helm v. Zarecor*, 222 U. S. 32; *Sharpe v. Bonham*, 224 U. S. 241) to be insufficient. However, at the argument below, each plea was, *after* these decisions had been rendered, attempted to be treated as if it were one of insufficiency of parties. The grounds of the pleas were that (1) neither certain managing trustees of the college, nor certain Missouri trustees holding church property who recognized the merger, nor certain members of the Cumberland Church who so recognized it, were made parties, and could not be, because, living in Missouri, they

would be aligned with and have the same citizenship as the plaintiffs, thereby defeating jurisdiction, and (2) since in *Boyles v. Roberts*, 222 Mo. 613, 121 S. W. Rep. 805, the union had been decided to be invalid, the bills herein were manifestly filed to avoid the effect of that decision. This although the same course was pursued in *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666. The supreme Court (*Helm v. Zarecor*, 222 U. S. 32, 32 Sup. Ct. Rep. 10; *Sharpe v. Bonham*, 224 U. S. 241) having in the Tennessee cases, before the argument below upon the pleas, held similar ones to be insufficient as pleas to the jurisdiction, counsel then presented them as in bar for the want of indispensable parties.

(e) Judge Van Valkenburgh, in the district court, in a very clear opinion (Rec. 707-711), overruled the demurrers (Rec. 667) and denied (Rec. 667) the sufficiency of the pleas. Neither demurrers nor pleas are preserved (Appellants' Brief). It is unnecessary to make right here any further reference to same. The point arising thereon is partially presented (Appellants' Brief, 445-512) as an issue arising upon the answer. It may be necessary to refer to them in considering the question whether any appeal is here.

(f) The answers in both the College (Rec. 512-547) and Church (Rec. 547-634) cases practically admit all the facts other than the validity of the union. The claim is, however, that the union, being held illegal, the defendants as true representatives of the Cumberland Church, are entitled to the property in controversy, to be used for the benefit of those members of that church who have

not recognized it. This, in substance, is the sole issue (Appellants' Brief, 1-445) though some stress is laid upon (*Id.* 445-512) the right of the plaintiffs to sue and the want of alleged indispensable parties.

6. Evidence in the cases.

As heretofore stated, practically all the evidence offered by each party was by stipulation (Rec. 37, 38, 141, 451, 457) taken from "the printed abstract of record in *Boyles v. Roberts*, 222 Mo. 613," and "the bill of exceptions in *Hayes et al. v. Manning et al.* and *Missouri Valley College et al. v. Guthrie*" (263 Mo. 1, 52). In addition thereto, there were other formal matters shown by the stipulations. From this, it may be assumed, as is true, that the facts here proven do not differ from those shown in the numerous cases wherein the union has been upheld, and wherein the same counsel had appeared for the Cumberland Church.

(a) *Stipulation of the parties.*

Stipulations 1 (Rec. 34-37) and 2 (Rec. 37) identified the properties in controversy, the general trust nature thereof, the record title thereto and possession thereof, consented to the use by either party of the evidence in the abstract of records in *Boyles v. Roberts*, 222 Mo. 613, and in the bills of exceptions in *Zarecor v. Provine*, a Tennessee case, and in *Hayes v. Manning*, 263 Mo. 1, and *Missouri Valley College v. Guthrie*, 263 Mo. 52. The pleadings and record (Rec. 361-450; 499-547) and

evidence (Rec. 38-141; 141-274; 274-339; 451-497; 637-649) in these cases were largely used. Another stipulation (Rec. 455-456) was to the effect that up to 1905 the College trustees were subject to and made regular annual reports to the Synod of the Cumberland Church and thereafter to the successor body claimed by plaintiffs to be the Synod of the Presbyterian Church. A fourth stipulation (Rec. 456-457) gave the citizenship of and positions held by those claimed by defendants to be indispensable parties, and a fifth (Rec. 636-637) conceded the diverse citizenship of the parties to the suits and admitted that the Presbyterian Church had communicants numbering 1,300,000.

(b) *Documentary Evidence Offered by Plaintiffs.*

The documentary evidence is prefaced by a topical index, readily showing the subjects to which it was directed, and may, in more succinct form, be thus summarized:

(1) The constitution of the Cumberland (Index pp. VII, VIII, par. XII) and Presbyterian Church (*Id.* pp. VIII, IX, par. XIV) defining the powers and nature of the respective organizations thus showing the *right* to unite, and the interest of the church, by its system of graded judicatories, in and to all church property wherever located, until in the General Assembly is vested the entire power and authority to speak through its Moderator and Stated Clerk so that the decisions of such bodies that the creeds of two uniting churches are not different, are not subject to review in the courts.

(2) The respective confessions of faith (*Id.* p. IX, pars. XV, XVI) showing that there were, in fact, no such substantial differences in doctrine as defendants claim impliedly prohibit a union.

(3) The steps taken towards union by the Cumberland (p. III, par. VI, pp. IV, V, par. X) and the Presbyterian (pp. V, VI, par. XI) churches together with the important documents (*Id.* pp. IX, X, par. XVII) bearing thereon, showing not only the fact of union in accordance with the constitutions, but that the Cumberland Church has, from its organization, actually construed its constitution as authorizing it to unite, a fact which is almost conclusive.

(4) Documents relating to the founding of the Missouri Valley College (*Id.* p. III, par. V) the minutes of the Missouri (*Id.* p. III, par. VIII) and Kansas (*Id.* p. IV, par. IX) Synods of the Cumberland Church and stipulations (*Id.* p. II, par. III) as to the Synods. Also documents (*Id.* pp. II, III and IV, pars. IV and IX) showing recognition of property rights in the Synod and authorizing the institution of the College suit.

(5) Actual transactions (*Id.* pp. VI, VII, par. XII) where the General Assembly, presbyteries and synods have repeatedly dealt with local property, regardless of local congregations or particular churches, thus by construction showing that the general church has an interest in the property used by the congregations. This construction of the parties is likewise of great force confirming the recognition by the courts that Presbyterian Church property is owned by the church at large, of which

the Moderator and Stated Clerk are fair representatives.

(c) *Documentary Evidence for Defendant.*

The evidence for defendant (Rec. 274-634) is from that in other cases affirming the validity of the union. One issue in the case is that there was some fraudulent conduct. Defendants' evidence on this subject (Rec. 328-340) taken from a Tennessee record, wholly fails to prove the charge. That for the plaintiffs (Rec. 328-340) upon this issue proves absolutely no fraud. The subject scarcely receives more than passing notice in appellants' brief (pp. 512-516) of 530 printed pages, and as Judge Van Valkenburgh said (Rec. 729) was not pressed in the trial court.

(d) *Evidence at the Trial.*

Plaintiffs, at the trial (Rec. 636) offered the balance of the evidence on the fraud issue (Rec. 636-648) and copies of resolutions of the Cumberland Church in 1904, showing (Rec. 636) that those opposed to the union offered a resolution mentioning the fairness and impartiality of the Moderator in the Cumberland Church from which it is apparent that there was no fraud.

7. Conclusions from the facts.

These conclusions, as repeatedly stated in the various opinions upon the questions at issue, are beyond the slightest doubt established by the evidence:

(a) Under the constitution of the two organizations, there was inherent authority for the two to unite.

(b) Each church, prior and up to the time of the union, recognized that this power existed and construed its constitution as so authorizing.

(c) If, for any reason, it be said that there was no *express* authority to unite, such authority was *necessarily implied* from the powers expressly granted.

(d) The power to unite having been granted to and exercised by the General Assembly and the Presbyteries, is binding upon each member of the church.

(e) The power having been given either expressly or by necessary implication, and then by the proper church judicatories decided to have been properly exercised, civil courts have no right in investigating property titles to compare creeds, so as to determine the differences therein or the effect thereof.

(f) The conveyances of the church property did not impress the same with a specific trust in favor of the Cumberland Church, but impressed same with such a trust as was subject to such changes as might be made in the constitutions and laws of the organization and such unions as should be made in accordance therewith.

8. Questions presented in the cases.

The College case is not here (*Infra*, Div. I) and, in any event, neither case was appealable because the decree of the Circuit Court of Appeals was

final (*Id.*, Div. II). These are preliminary questions, beyond a decision of which this case will probably not go.

But if the merits of the appeal are to be considered, then the appellants' printed argument presents, as necessary to be decided herein, these questions in addition:

(a) The union was not valid (pp. 182-445, Div. I-XXV), which point is answered in Division III hereof.

(b) There are indispensable parties not brought before the court (pp. 445-503, Div. XXVI), which is answered in Division IV.

(c) The plaintiffs in neither case were proper class representatives (pp. 503-512, Div. XXVII) of the Presbyterian Church, a point also answered in Division V.

(d) The bill should have been dismissed as to the Mt. Carmel Church (pp. 512-513, Div. XXVIII) which subject is dealt with in Division V.

(e) The contract of union was fraudulently obtained (pp. 513-516, Div. XXIX). This point is herein answered in subdivision (g) of Division III.

ARGUMENT.

I.

The College case is not here because it was not in fact appealed. Had it been, there was failure to join all the co-defendants or have a severance, or have issued or served any citation to plaintiffs therein.

(a) From the facts already stated (*Supra*, Statement, Div. I, pp. 1-8) it is apparent that no steps were taken to appeal the College case. The Church case *only* was appealed. The College case is not, and has never been, here.

(b) Moreover, had there been an appeal in the College case, it could not be now presented because, *first*, several co-defendants, *without severance*, were omitted as appellants (*Hardee v. Wilson*, 146 U. S. 179; *Beardsley v. Arkansas & L. R. Co.*, 158 U. S. 123) and, *second*, the plaintiffs therein were never made parties thereto nor any citation issued to or served upon them (*Castro v. U. S.*, 3 Wall. 46; *Alviso v. U. S.*, 5 Wall. 824; *Hewitt v. Filbert*, 116 U. S. 142; *Jacobs v. George*, 150 U. S. 415; *West v. Irwin*, 4 C. C. A. 401, 54 Fed. Rep. 419).

II.

The decree of the Circuit Court of Appeals was final and hence neither case was appealable.

(1) An appeal from the Circuit Court of Appeals, whether it be in both or only one of the

cases, is here prosecuted upon the theory that jurisdiction having been invoked both on the ground of diverse citizenship and a federal question, the judgment of that court was not final (*Howard v. U. S.*, 184 U. S. 676, 680; *Henningson v. U. S. Fidelity & G. Co.*, 208 U. S. 404; *U. S. Fidelity & G. Co. v. Bray*, 225 U. S. 205, 214).

This theory cannot be applied to this case, for that:

(a) The doctrine, in the case of an appeal from the Circuit Court of Appeals, has been expressly decided (*Denver v. New York Trust Co.*, 229 U. S. 123, 133) to be inapplicable where, as here, the bill (Rec. 1232) only brings the federal question into the case by *suggesting* that the defendant *will* interpose a *certain defense* which, *if* sustained, *will* impair the obligation of a contract. In such cases, the governing rule is by Judge Caldwell in *Fergus Falls v. Fergus Falls Water Co.*, 19 C. C. A. 212, 72 Fed. Rep. 873, 875, thus aptly summarized:

"It is apparent that the only use the plaintiff proposes to make of the constitution is as a barrier to a defense which the plaintiff suggests the defendant may set up. The appeal to the constitution is made, not to support the plaintiff's cause of action, but by way of replication to an anticipated defense."

This view, so pointedly put by Judge Caldwell, has not only upon the circuit been repeatedly applied (*State of Kansas v. A. T. & S. F. R. Co.*, 77 Fed. Rep. 339, 341; *Joy v. St. Louis*, 122 Fed.

Rep. 524; *People's United States Bank v. Goodwin*, 160 Fed. Rep. 727, 730; *American Water Works & Guarantee Co. v. Home Water Co.*, 115 Fed. Rep. 171, 180, 181; *Montana Ore-Purchasing Co. v. Boston, etc., Co.*, 35 C. C. A. 1, 93 Fed. Rep. 274, 278, 279; *Filhoil v. Torney*, 119 Fed. Rep. 974, 975) but has so often been here announced, that no more is necessary than to refer to the cases, each one of which is so precisely in point (*Tennessee v. Union & Planters' Bank*, 152 U. S. 454, 464; *Sawyer v. Kochersperger*, 170 U. S. 303; *R. Co. v. Bell*, 176 U. S. 321, 330; *Arkansas v. Kansas & Texas Coal Co.*, 183 U. S. 185, 188; *Boston, etc., Co. v. Montana, etc., Co.*, 188 U. S. 632, 638, 639; *L. & N. R. Co. v. Mottley*, 211 U. S. 149, 152; *Denver v. N. Y. Trust Co.*, 229 U. S. 123, 133; *Taylor v. Anderson*, 234 U. S. 74, 75) that a mere mention of them is sufficient as an argument.

(b) An *anticipated* defense, if it could be made the basis of a federal question, could not be available, if, afterwards, either disclaimed by the defendants or in any other way actually rendered unavailing to them. In *Robinson v. Anderson*, 121 U. S. 522, 524, it was here said that when defendant *disclaimed*, by answer, any such defense as the bill stated would be asserted, all the allegations of the bill as to a federal question were made "of no avail as soon as the answers were filed and it was made to appear that no such defenses were relied upon." This doctrine was restated in *Crystal Springs L. & W. Co. v. Los Angeles*, 82 Fed. Rep. 114, 122, and *Montana, etc., Co. v. Boston, etc., Co.*, 35 C. C. A. 1, 93 Fed. Rep. 274, 279;

upon appeal (*Boston, etc., Co. v. Montana, etc., Co.*, 188 U. S. 632, 645, 646) of the latter, both of these cases at the circuit were expressly approved and Mr. Justice Peckham thus disposed of the question now being considered:

"The only foundation for the alleged jurisdiction consists of the averments of complainant relative to the contention of the defendants as to their defense. Now, if it appear from the answer of defendants that no such claim as is necessary to give the court jurisdiction is in fact made, but, on the contrary, is disclaimed and denied, then the basis of jurisdiction fails, and the court cannot proceed. * * * Jurisdiction in this class of cases must be based upon the fact that the case is one arising under the constitution or laws of the United States. If it appear to be such in the plaintiff's pleading simply because of the allegations as to what the defenses are on the part of the defendant, if when the answer come in it is seen that no such defense in fact is set up or insisted upon, it is then seen that no such case exists as stated in the complaint, and no jurisdiction therefor exists to try questions which are not a kind coming within the statute, and the court should then dismiss for want of jurisdiction."

(2) The facts are without the slightest dispute and clearly bring the case within the exceptions to the rule invoked.

(a) Each bill (Church case, Rec. 1; Amendment, 14; Second Amendment, 25; College case, 27) unquestionably invoked jurisdiction upon the

ground of diverse citizenship. It *also*, incidentally, unnecessarily, and prematurely, *by way of anticipating a defense*, presented (Church case, Rec. 12, par. 13; College case, Rec. 32, par. 10) this very *doubtful* federal question: The defendants *claimed* that *Boyle v. Roberts*, 222 Mo. 613, established as a Missouri rule of property that a civil court can, regardless of any contract among members of a church or any decision of the church authorities to the contrary, determine whether the creed or doctrine of a merged church is the same as that of its constituents, and if by it determined not to be, then the property is, without more, forfeited to those members who refuse to recognize the merger; this claim, *if sustained*, would violate the federal constitution, in that it would deprive church members of the right to contract, as between themselves, as to what should be the church creed and how, in case of dispute, that creed should be determined. When thereafter, *before* (Rec. 734) the submission of the case to the Circuit Court of Appeals, on January 15, 1915, *Boyle v. Roberts*, 222 Mo. 613, was, upon December 31, 1914, expressly overruled (*Hayes v. Manning*, 263 Mo. 1; *Missouri Valley College v. Guthrie*, 263 Mo. 52) of course, the *claim* of defendants, *as pleaded by plaintiff*, no longer existed and the question automatically passed out of the case.

(b) Moreover each answer (College case, Rec. 512, par. 1; Church case, Rec. 547, par. 1) denied that the case arose under the laws and constitution of the United States, that in the College case (Rec. 512, par. 1) expressly averring that the real con-

troversy was *wholly* between citizens of Missouri, and that in the Church case (Rec. 546, par. 20) that *all* of the defendants "are citizens of * * * Missouri." By stipulation (Rec. 668-669, 671, 672) at the trial the citizenship of plaintiffs in both cases and defendants in the College case, was admitted as alleged. In addition to all this, the allegations (Rec. 519, 559) of each bill as to the *supposed* federal question were specifically denied, and the alleged claim of defendants as to the effect of *Boyle v. Roberts*, 222 Mo. 613, expressly disclaimed.

(3) The plain result is that if, at any time, there were involved a federal question, because of plaintiffs' *anticipation* of the defense, it was thereafter removed by an express disclaimer and by the subsequent decisions of the state court. The question thus went out of the case. It was also in effect practically withdrawn by the subsequent stipulations of the parties who tried the case on the theory that jurisdiction was invoked *solely* because of diverse citizenship. The result is that there can be no review here, because there was involved no *such* federal question as prevented the decision of the Circuit Court of Appeals from becoming final. If this view be sound, it is unnecessary to consider the case further, as the remaining questions (*Infra*, Div. III, IV, V) relate to the merits.

III.

The Union Was Valid.

This, and the (*Infra*, Div. IV, V) remaining questions, as already stated, will only be considered if it should be held that the case is appealable.

The first of the questions presented by appellants' enormous brief is that the union was invalid and it is the subject of the same elaborate argument (Appellants' Brief, pp. 1-445) heretofore unnecessarily made to the many courts which have heretofore considered the same. It may be resolved into the two contentions:

(1) Neither church had any authority to unite.

(2) Even if authority existed, there was an improper exercise thereof, because of the differences in creed between the two churches, and because the constitutional steps providing for a change were not strictly followed.

(a) This court in two cases has decided that the federal court can, in actions like these, regardless of the presence or claims of individual possessors or holders of legal title, take jurisdiction (*Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77; *Sharpe v. Bonham*, 224 U. S. 241, 56 L. Ed. 747) to settle, *as between the churches*, the validity of the union, because, as put by Mr. Justice Hughes in the first case, "the controversy *transcends* the rivalries of those claiming membership * * *" and "embraces the fundamental questions of these religious associations * * * in their denominational work * * *" This transcendent question has been determined and the validity of the

union upheld in these cases: (Federal Courts: *Sherard v. Walton*, Tenn., 206 Fed. Rep. 562; *Barkley v. Hays*, Mo., 208 Fed. Rep. 319; affirmed 138 C. C. A. 217, 222 Fed. Rep. 667; *Helm v. Zarecor*, Tenn., 213 Fed. Rep. 648; *Sharpe v. Bonham*, Tenn., 213 Fed. Rep. 662. State Courts: Alabama, *Harris v. Cosby*, 173 Ala. 81, 55 So. 231; Arkansas, *Sanders v. Baggerly*, 96 Ark. 117, 131 S. W. 49; California, *Permanent Commission of Missions v. Pacific Synod*, 157 Cal. 105, 106 Pac. 395; Georgia, *Mack v. Kine*, 129 Ga. 1, 58 S. E. 184; Illinois, *First Presbyterian Church of Lincoln v. First Cumberland Presbyterian Church of Lincoln*, 245 Ill. 74, 91 N. E. 761; *Fussell v. Hail*, 233 Ill. 73, 84 N. E. 42 s. c. below, 134 Ill. App. 620, 630; *Fancy Prairie Church v. King*, 245 Ill. 120, 91 N. E. 776; *Pleasant Grove Congregation v. Riley*, 248 Ill. 604, 94 N. E. 30; Indiana, *Ramsey v. Hicks*, 174 Ind. 428, 91 N. E. 344, 92 N. E. 164; *Bentley v. Ulay*, 175 Ind. 494, 94 N. E. 759; Kentucky, *Wallace v. Hughes*, 131 Ky. 445, 115 S. W. 684; Mississippi, *Carothers v. Moseley*, 99 Miss. 671, 55 So. 881; Missouri, *Hayes v. Manning*, 263 Mo. 1; *Missouri Valley College v. Guthrie*, 263 Mo. 52; Oklahoma, *First Presbyterian Church v. Cumberland Presbyterian Church*, 34 Okla. 503, 126 Pac. 197; Texas, *Broten v. Clark*, 102 Tex. 323, 116 S. W. 360).

At the time of the insitution of these cases, the Missouri court (*Boyles v. Roberts*, 222 Mo. 613) by a close division of the judges, decided the union to be invalid, because of an utter lack of power of the Cumberland church to unite. Subsequently that court rejected such doctrine, re-

nounced same as unsound and approved the union (*Hayes v. Manning*, 263 Mo. 1; *Missouri Valley College v. Guthrie*, 263 Mo. 52). The Tennessee court in two cases (*Landrith v. Hudgins*, 121 Tenn. 556, 120 S. W. Rep. 783; *Bonham v. Harris*, 125 Tenn. 452, 145 S. W. Rep. 169) over a dissent in each, denied the validity of the union, upon the ground that the creeds of the two churches were, in fact, different, though the church judicatories had decided otherwise. This was in the face of *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666, and contrary to the former unanimous views of the same court (*Nance v. Busby*, 91 Tenn. 328, 18 S. W. Rep. 874) expressed by Mr. Justice Lurton, while a member thereof. When the latter became a member of the United States Circuit Court, he, with the concurrence of his associates upon the Circuit Court of Appeals (*Brundage v. Deardorf*, 92 Fed. Rep. 214, 34 C. C. A. 304) adhered to his former views. Since so many courts have thoroughly considered the question, it would be an idle ceremony to go to any great length in restating the facts upon which they have rested their judgments and the reasons they have given for denying past contentions, even though here renewed in a voluminous brief of 530 pages.

(b) Both churches were general organizations, consisting of a system of gradation tribunals, by whom every question of every character, including power, and method of its exercise, and the church creed, was to be finally decided (*Presbyterian Rec.* 238-252, 269; *Cumberland Rec.* 251-265). The form of government implied supreme

power. The great Presbyterian Church is an organization which performs for the *whole* church certain acts through appropriate organs (Rec. 141) of which the local congregation, known as a particular church, is but a small part. The General Assembly represents "in *one body* all *particular churches* of the denomination" (Rec. 242) and constitutes "the bond of union * * * among *all* our churches" (Rec. 243). The revisory power of one tribunal over another may be voluntarily exercised without any complaint and without regard to there having been kept a record of the matter to be reviewed (Rec. 245). This church, through its different bodies, can, under the *express* provisions of its constitution, declare the terms of admission into its communion (Rec. 238) "receive members into the church" (id. 240) "*form or receive new congregations,* * * * *order whatever* pertains to the spiritual welfare" (id. 241) decide "all controversies respecting doctrine and discipline" (id. 243) and amend or alter its creed, form of government and constitutional provisions (id. 244). So the constitution of the Cumberland Church had, practically, the same provisions, for it authorized the judicatories to "receive members" (id. 259) "concert the best measures for promoting the spiritual interests of the church" (id. 259), "unite or divide churches, * * * *form and receive new churches*" (id. 260) "superintend the entire affairs of the church" (id. 262) "receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church" (id. 262) and

amend the faith of the church and any provision of its constitution (id. 263). From the general and specific powers necessarily flowed the power to unite with another church. - Now that Missouri has receded from its former decision, all the courts of final resort which have considered the question may be said to have thus expressly decided. So pointed have been these decisions upon the precise question, that their force would be weakened by quoting extracts therefrom or making any effort to follow in detail the extensive theoretical argument upon the subject presented by counsel.

(c) If, however, there were even doubt of the soundness of the judicial views heretofore adopted, it would be removed by the action of both churches in the past repeatedly construing their constitutions as authorizing such a union. Upon this subject it may be well to repeat the facts recited in the statement, with appropriate references to the record.

The Cumberland Church from the time of its organization, and up to and including the time of union, always recognized and acted upon the theory that it had power to unite with another. In 1810, at the first meeting of its presbytery, a circular letter (Rec. 44-45) was framed and issued, expressing in no uncertain terms a wish and desire to reunite with the Presbyterian Church whenever it could be done on gospel principles. This was reiterated (Rec. 45-46) at the meeting in 1811. In 1812, the presbytery specifically (Rec. 46) declared: "That this presbytery have always been, and expect always to be,

ready and willing for union with the general Presbyterian Church on Gospel principles." A resolution adopted by it in 1813 recited (Rec. 45) that "this Presbytery has made every reasonable effort to be reunited to the General Presbyterian Church." At the meeting of its General Assembly in 1860, a resolution (Rec. 47) was adopted affirming the readiness of the church "to reciprocate fraternal feelings with all Christians," but expressing more especially a desire for union with "the great Presbyterian family," which had "the same church government" and was "doctrinally converging to the same faith," wherefore was cherished "the fond hope that the day is not far distant when the entire family shall be represented by one General Assembly." In 1867 its General Assembly negotiated (Rec. 47-50) with the Southern Presbyterian Church for a union therewith, and, without dissent, committees were appointed (Rec. 50) to formulate plans looking to it. It failed, however, not because of any question as to the lack of power, but solely because the Southern Church was unwilling to agree to the proposed modifications of the doctrinal statement. In 1873 it attempted (Rec. 50-51) to unite with the Presbyterian Church. In 1882 proceedings were begun (Rec. 51-52) for union with the Evangelical Reform Church, which were not consummated, but not on account of any question as to power. In 1885 a proposition (Rec. 52-55) was under consideration for a union with the Methodist Protestant Church. In 1889 it united its Japan missions with those of the Presbyterians (Rec. 56-58) such being the then church

organizations in that country. In 1898 a judiciary committee of its General Assembly made (Rec. 58) this proposal for unions with other denominations:

"Whereas all schemes and proposals for consolidation or for Church co-operation with other Churches are of such nature that they fall within the scope of the Assembly's Constitutional power; therefore, resolved, that no such proposals should be made to other Churches by *any part* of this Church, nor, if made by other Churches, or *any part* thereof, should they be publicly considered by *any part* of this Church, until after the General Assembly shall have properly authorized such proceedings."

In 1903 a committee was appointed (Rec. 60) by the General Assembly to confer with the representatives of the Presbyterian Church as to a union. It recommended a resolution (Rec. 59-60) favoring a conference with a like committee of the Presbyterian Assembly. In 1904 a report (Rec. 61-66) was made upon union by Dr. W. H. Black, Chairman of the Committee on Fraternity and Union. This report thus clearly summarized how often the power to unite had, *with absolute unanimity*, been, by the Cumberland Church, assumed to exist:

"In support of our recommendation, we beg leave to submit the following grounds of our action for your candid consideration:

1. *Things Which Presumptively Favor Union.*

1. The History of the Movement. It was spontaneous in both Churches, there being no previous arrangement or agreements, but individuals, Presbyteries and Synods acted independently, in both Churches, in favor of the movement, after the publication of the action of the General Assembly of the Presbyterian Church in the United States of America of its acts of revision, the Declaratory Statement and the Brief Statement.

2. The historic origin and spirit of the Cumberland Presbyterian Church. Our fathers did not want independence, but liberty, such liberty as is now secured by the Declaratory Statement and specifically emphasized in Concurrent Declaration No. 1 (p. 63-a.)

The fact that this liberty was what the fathers sought, is evident from the action of Cumberland Presbytery in the first year of its history. Note the following quotations:

1810: 'We have in view as Presbytery to make another proposition to the Synod of Kentucky or some other Synod for a reunion.' Circular letter, Digest, p. 235.

1811: 'This Presbytery agree * * * to meet a like committee of West Tennessee Presbytery or Muhlenburg Presbytery in order to confer on the subject of reunion.' Minutes, Digest, p. 236.

1812: 'This Presbytery have always been and expect always to be ready and willing for union with the general Presbyterian Church on gospel principles.' Minutes, Digest, p. 236.

1813: 'Cumberland Presbytery has made every reasonable effort to be reunited to the General Presbyterian Church.' Minutes, Digest, p. 236.

1860: 'We cherish the fond hope that the day is not far distant when the entire family

shall be represented in one General Assembly.' Minutes, Digest, p. 232.

Since then various efforts have been made at Organic Union with the Southern Presbyterian Church and the Presbyterian Church in the United States of America.

1867: A committee representing our General Assembly, composed of Drs. Burney, Burrow, Baird, Bird, Woods and Poindexter, agreed on the following:

'The doctrinal symbols of the Presbyterian Confession of Faith would be accepted, if so modified as to exclude all phraseology and modes of expression which may plausibly be construed to favor the doctrine of necessity or Fatality.'

(Dr. W. B. McDonnold was in conference with this committee when the above was adopted.) (Digest, p. 243.)

1873: In conference on the subject of Organic Union with the Presbyterian Church in the United States of America, Drs. Beard, Baird, Mitchell and Miller adopted the following:

'As God in His Spirit and providence clearly calls us to a serious consideration of the question of the union of these two branches of His Church, it should be gravely considered whether the Great Head of the church has not also made an occasion for such slight changes in the language of these time honored standards as will fully adapt them to the faith of both churches.' Digest, p. 262.

In addition to the above, our General Assembly has taken action on the subject of Presbyterian union among missions on the foreign fields as follows:

1885: With reference to the United Church of Christ in Japan: 'We believe union on the foreign mission field is desirable and will

cheerfully enter into whatever measures may seem best looking to that end.' Digest, p. 507.

1888: 'If Cumberland Presbyterians in Japan are satisfied to become a part of said United Church, upon the basis of the exceptions to the Westminster Confession of Faith, that are set forth in the Declaratory Act of the United Presbyterian Church of Scotland, such a step will meet the approbation of the General Assembly.' Digest, p. 508.

These quotations show very plainly the fathers' attitude on the subject of Organic Union with the Presbyterian Church, and the history and actions of the Assembly have been consistent, from the beginning on this subject. The instruction given our missions in Japan is explicit to the effect that union was desirable on the basis of the Declaratory Act of the Church of Scotland, which Act does not allow any more liberty of belief, nor modify in a more emphatic manner the objectionable features of the Westminster Confession of Faith, than does the Declaratory Statement of the Presbyterian Church in the United States of America.

3. The character and aims of the Presbyterian Church in the United States of America: This church, which is the greatest Presbyterian Church in the world, heartily desires a truly national field for its work and workers. It wishes its aggressive evangelizing operations carried on in the south as well as in the north, and seriously objects to being called the 'Northern Presbyterian Church.' This being the ideal of the Presbyterians, naturally they would hail the union with our church as a providential means to its realization.

In 1874, when negotiations were under way between them and our Church, looking to or-

ganic union, it was we who broke off the negotiations, and not they.

4. Revision has revised. Attention will be called to this matter further on, but it is mentioned here in order to emphasize the presumption in favor of union.

5. The unanimity of the Committee on Union: So far as the representatives of the two Churches were present, there was not a single note of discord concerning the report as finally adopted, and when we remember the prayerfulness of the committees during the negotiations, the painstaking with which they reached their conclusions after twelve days of conference, and the representative character of the men who composed the committees, the unanimity is all the more remarkable and raises the presumption in favor of the adoption of the report."

The joint report of the two churches (Rec. 67-70) setting forth the plan and basis of union, was, in 1904, presented to and spread upon the record (Rec. 71) and upon a roll call (Rec. 71) a vote was cast adopting the plan, and recommending its submission to the presbyteries. Afterwards a formal vote was taken (Rec. 71-78) by the Presbyteries in 1905, and the vote of the Presbyteries was (Rec. 73-78) in the same year canvassed by the General Assembly and declared constitutionally adopted. A minority report (Rec. 78-79) was then made when the question of power was *for the first time* thus (Rec. 78) raised:

"It is our opinion (1) that there is no power given the General Assembly by the

Constitution of the Cumberland Presbyterian Church to negotiate, enter into, or form such union as is proposed, and was submitted by the Moderator and Clerk of our Assembly.

(2) That such action is contrary to, and in violation of, the provision and spirit of the Constitution of the Cumberland Presbyterian Church and such action is without authority and void."

If these churches had been business institutions, their construction of their powers would have been regarded as conclusive. (*Chicago v. Sheldon*, 9 Wall. 50, 54, 19 L. Ed. 594, 596; *Topliff v. Topliff*, 122 U. S. 121, 30 L. Ed. 1110; *Old Colony Trust Co. v. Omaha*, 230 U. S. 100, 118, 57 L. Ed. 1410, 1417; *St. Joseph Union Depot Co. v. Chicago, etc., R. Co.*, 89 Fed. Rep. 648, 657, 32 C. C. A. 284.) So, in some of the cases involving this union the doctrine has been strongly asserted that such construction is conclusive (*Hayes v. Manning*, 263 Mo. 1; *Wallace v. Hughes*, 131 Ky. 445, 470). In *Smith v. Swormstedt*, 16 How. 288, 308, 14 L. Ed. 942, 951, Mr. Justice Nelson, in commenting upon a construction by a church of its own power by an exercise thereof, said:

"These instances, together with the present division in 1844, furnish evidence of the opinions of the eminent and experienced men of this Church in the several Conferences, of the power claimed, which, if the question was otherwise doubtful, should be regarded as decisive in favor of it."

It follows that if there were doubt as to the power, the long acquiescence in its existence puts the matter beyond discussion.

(d) The negotiations for and the action resulting in the union appear not only from the records of the Cumberland (Rec. 58, pp. 58-115, pars. 22-54) but also from those of the Presbyterian Church (Rec. 115-233, pars. 55-98). The regularity of these proceedings has been, in the various phases of litigation between the churches, repeatedly upheld. No new suggestion is made why the same rule should not be here applied.

(e) But it was decided in Tennessee (*Landrith v. Hudgins*, 121 Tenn. 556, 120 S. W. Rep. 783; *Bonham v. Harris*, 125 Tenn. 452, 145 S. W. Rep. 169) that though the power to unite existed, it was improperly exercised, because the churches, in some respects, differed in creeds. Upon this doctrine appellants now rely. The other decisions are conclusive as to the error in this view. Most of the cases decided, and the churches themselves determined, there was no substantial difference in creed. There was not in fact any such difference. Had there been, the civil courts would not consider the question. All the courts, except that of Tennessee, now so recognize. *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666, 676, must be here regarded as conclusive upon the point. There, in the most sweeping terms, the court held that two churches having exercised their powers, their judgment as to how the same should be exercised and that there was no difference in creed is conclusive, and beyond review by the courts. Mr. Justice Miller said:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline or of faith or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

All the other courts of final resort, excepting that of Tennessee, which have considered this union, have so decided, and rested their judgment upon the opinion of Mr. Justice Miller, in *Watson v. Jones*. The Tennessee doctrine has been shattered, not only by the changing position of the highest court of that state, but by the strength of the dissent therein, and by the weight of authority. Here the principle of *Watson v. Jones* should, if possible, be applied, because the exact points now made were presented to both churches and by them actually determined. Not only was the Cumberland committee report (Rec. 61-66) favoring union full and complete, but the report (Rec. 67-70) of the joint committee of both churches went into and disposed of practically every suggestion now made. After that, in 1904, the Cumberland Church adopted (Rec. 71) what is known as the Templeton resolution, that not only should those two reports be adopted, but that

the basis of union should be submitted "in the usual constitutional manner," which was afterwards done (Rec. 71-115) and the Assembly, after perfecting the result, adjourned (Rec. 115) not simply *sine die*, as erroneously stated, but until and as part of the next annual meeting of the Presbyterian Church, May 3, 1907. There was no semblance of right for the minority, as dissenters, to pretend to meet (Rec. 286) May 24, 1906, as the regular Cumberland Assembly declare that there had been no legal adjournment and continue (Rec. 286) as if the body were still in session. When, in 1905, the Cumberland Special Committee upon organic union reported (Rec. 73-78) that the union had (Rec. 75) "been constitutionally agreed to" and its basis "constitutionally adopted," a dissent (Rec. 78-79) was presented covering practically every point now made by counsel. Thereafter, in the same year there was presented (Rec. 82) a *lawyer-like* document called the McClellan Protest. This, if prepared today for the first time would be recognized as a summary of counsel's present brief. The majority presented (Rec. 85-96) an answer to this McClellan Protest. The Cumberland Synod, in 1905, adopted (Rec. 39-40) what is known as the "Baity resolution" directing steps towards seeing, when the union was adopted, that church property went to the united church. There was evidently a protest against this resolution, because there was adopted (Rec. 42-43) a special committee report (Rec. 40-42) in answer to that protest. These issues thus made in 1905 resulted in the union in 1906 (Rec. 97-111). The Cum-

berland "Moderator's declaration of union" (Rec. 111) was formally adopted by the Assembly after the dissenters presented (Rec. 111-113) and had spread upon the record what was known as the "Fussell" protest against the action of the majority. After formal notice (Rec. 113-114) of the union given by each church to the other, there was a formal adjournment. From the situation thus disclosed, it is manifest that there was not only an opportunity given to the church to act, but every question now made was presented to and actually determined by the church judicatories.

(f) It would be unfair to the Presbyterian Church to let these cases be submitted without a few words as to creed and doctrine. Counsel entirely misunderstand the facts and misconstrue the questions of church doctrine and the methods by which same were adopted.

Both churches have always held the same doctrinal standard, the Westminster Confession of Faith. The sole difference, when differences existed, was in the doctrine of fatality or, as the Cumberlands in 1813 (Rec. 46), put it:

"It has already been observed that the Presbyterian Confession is their (Cumberland Presbyterian) confession, except the idea of fatality."

This view was adhered to in 1814 (Rec. 47, par. 12) in the formal adoption of the new confession of faith and in its revision (Rec. 47, par. 13) by the General Assembly in 1829. Again,

in the revision of 1883 (Rec. 55-56, par. 20) it was somewhat modified, yet, as to the confession as adopted in 1813 and 1829, it was expressly recited that those "who prefer to adhere to the doctrinal statements contained therein are at liberty so to do."

Notwithstanding this, an elaborate argument is presented (Appellants' Brief, 280-340) as to the differences in creed. Preparatory to the union, the Presbyterians, in 1903, by a revision, amended (Rec. 115-123) their confession of faith so that it might not be objectionable to the Cumberland, who had, in 1813, declared, and in 1814, 1829 and 1883, reaffirmed the declaration that there were no differences between the churches "except the idea of fatality."

In 1904 (Rec. 61-66) the committee of the Cumberland Assembly declared (Rec. 60-64) that this "revision has modified the definition of the generic principle of the Confession, viz.: *Divine Sovereignty*. It was that definition which led our fathers to make the charge of '*Fatality*' against the confession. * * * Tried by the *Threefold 'Fatality'* test, and by the *Ordo Salutis*, it agrees with Cumberland Presbyterian teaching."

In 1904 the joint committee of both churches in their report favoring the union (Rec. 68-69) stated:

"In adopting the Confession of Faith of the Presbyterian Church in the United States of America, as revised in 1903, as a Basis of Union, it is mutually recognized that such agreement *now* exists between the system of

doctrine contained in the Confessions of Faith of the two Churches as to warrant this union—a union honoring alike to both.”

So it was (Rec. 69) further said that the revision of 1902 “reveals a doctrinal agreement favorable to reunion.”

It was upon these reports that union was (Rec. 71-115) effected, both General Assemblies adopting the joint report.

(g) It is vaguely hinted that there was some kind of fraud in the method in which the union was adopted. This was an afterthought, pure and simple, based upon some evidence in a Tennessee case, offered by the defendants (Rec. 328-340). The balance of the evidence in that case upon this subject was offered by (Rec. 637-649) plaintiffs. There is not the slightest ground for claiming fraud, and the point was not pressed below. It is now barely noticed. (Appellants' Brief, 513-516.) Upon the subject, Judge Van Valkenburgh below (Rec. 729-730, 208 Fed. Rep. 319, 333) said:

“Counsel for defendants urge that some fraud and misrepresentation appears on the part of those representing the Presbyterian Church, in that the effect of the vote in presbytery was misstated, and that a vote in the assembly was unduly precipitated. This feature of the case received no attention at the oral argument. It does not seem to have been presented in earlier cases in other jurisdictions. It probably has its origin in individual misunderstanding; sincere, no doubt, but scarcely justifying such serious consideration. As was intimated in a former decision, and is

undoubtedly the general rule, the presence of fraud would justify a court in taking cognizance of a question otherwise left for final determination to some other tribunal; but a charge of fraud against a great religious organization should not be entertained except upon clear proof. The evidence in this case does not measure up to that standard."

The union had been in contemplation during the entire existence of the Cumberland Church. The active negotiations therefor began (Rec. 58) in 1903 and continued until effected (Rec. 113-114) in 1906. Committees joint (Rec. 68) and several (Rec. 61) in 1904 investigated and reported. In 1904 the Cumberland Church adopted (Rec. 71) the "Templeton resolution" to submit "the basis of union * * * in the usual constitutional manner." This adoption was only after the resolution had been for some time assigned for a special hearing upon a given date. The active conduct of proceedings for a union extended through 1904 and 1905 and until 1906.

In 1905, and before the union, the Cumberland Assembly at Fresno, California, in adopting an answer (Rec. 85) to the McClellan protest, thus met (Rec. 94) the point now suggested as an alleged fraud:

"This Assembly has refused to go behind the vote of the Dallas Assembly, or to assume that its members were not competent to vote intelligently *on the plainly printed and lengthily discussed* proposition for union."

An overwhelming majority of the members became part of the united church. In view of the entire situation, the suggestion of fraud is so baseless that it should not have received even this passing notice.

IV.

The plaintiffs in each case were authorized to bring the suits and no indispensable defendants were omitted.

Counsel for appellants have discussed (Brief, Div. XXVI, pp. 297-335, Div. XXVII, pp. 335-342) these questions separately, but it will tend to clearness to consider them together, in the light of a few well settled rules.

(1) Each case proceeds upon the theory that in a great religious or educational trust controversy, a church or college by proper class representation (*Smith v. Swormstedt*, 16 How. 302, 14 L. Ed. 942; *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666; *Helm v. Zarecor*, 222 U. S. 32; *Wheelock v. First Presbyterian Church*, 119 Cal. 481, 51 Pac. Rep. 841) can invoke the visitorial power of a court of equity to restrain the trust to its proper sphere and confine it to the uses to which it is put. (1 Blackstone 483; *Dartmouth College v. Woodward*, 4 Wheat. 518; Webster's Argument, id. 563-566, 569, 576, Hopkinson's Argument, id. 622, Opinions of Mr. Justice Washington, id. 661-662, and Mr. Justice Storey, id. 702). The legal title is not changed by the exercise of such power, but the trust upon which it is held

is ascertained and enforced. (*Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666; *Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77; *Westminster Church v. Trustees of New York Presbytery*, 127 N. Y. Supp. 836, 142 App. Div. 855, 137 N. Y. Supp. 1148, 152 App. Div. 949; on appeal, 211 N. Y. 214, 105 N. E. Rep. 199). When such a situation is presented and the classes are fairly represented, then, as Mr. Justice Hughes, in *Helm v. Zarecor*, 222 U. S. 32, 38, 39, 56 L. Ed. 77, 80-81, said:

“* * * the controversy *transcends* the rivalries of those claiming membership in the board and the assertion of rights inhering in that corporation itself. It embraces the fundamental question of the rights of these religious associations, said to be represented by the respective parties, to use and control the corporate agency, and to have the benefit in their denominational work of the corporate property.”

It matters not what are the individual rights of trustees or holders of legal titles or persons asserting official claims to offices, nor what technical rules of practice might, in such cases, possibly be applied. Public interest and policy demand that the courts hear and determine the respective rights as between the churches themselves. The importance of such view to great church organizations with a large membership in every state, cannot be over-estimated, for if sound, then in controversies over a church union or division, one case can, as was here done in the church case, be brought in the federal court of one

state with the final power of decision resting in the Supreme Court of the United States. Had this course been originally pursued as to this controversy, then instead of many cases in twelve states, one would have determined the entire matter.

Such was the method adopted in the Free Church of Scotland Appeals, L. R. App. Cas., 1904, pp. 515, 517, where the case was in part thus stated by the court:

"Upon the formation of the union large majorities of the congregations adhered to the minority in the Assembly and desired to continue the worship in their churches in connection with the Free Church, and they refused to surrender these churches to the United Free Church. Thereupon the *General Assembly of the United Free Church and its Moderator brought actions against the ministers and others to oust these ministers, etc., and obtain possession of the churches.*"

The failure of counsel to recognize the principle upon which *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666; *Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77, and *Sharpe v. Bonham*, 224 U. S. 241, 56 L. Ed. 747, were maintained, leads them into a long discussion (Appellants' brief, 297-342) of the narrow view that technical objections, possibly, in some circumstances, applicable to individual controversies, can be asserted here. These objections are: (a) There were absent parties whose presence was indispensable (Appellants' brief, 297-335) and (b) the plaintiffs in neither

case were properly class representatives (*id.* 335-342). Both points are disposed of by *Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77, and *Sharpe v. Bonham*, 224 U. S. 241, 56 L. Ed. 747, and this argument could well stop with a simple reference to these cases.

(2) As already stated, the constitution of the Cumberland (Rec. 253-266) and Presbyterian (Rec. 235-269) churches, show the very nature of the organization and character of the church to be such that upon a great question like one of a union with another large body, the general church which made the contract, as distinguished from the local congregation, has such an interest in the property affected thereby, as to be able to go to the courts for the enforcement of the rights it thereby acquired. Moreover, the system of gradation tribunals, each of the lower bodies being subject to the orders of some superior body, shows such a relation as to give a direct connected interest in the church at large (Rec. 235-244). *That* church (Rec. 239) is to "be *governed* by congregational, presbyterial and synodical assemblies." The *general* church has parts known as *particular* churches or congregations (Rec. 239) and the constitution (Rec. 239) recognizes these are but parts of the *general* church, by providing:

"III. As this immense multitude cannot meet together in one place, to hold communion, or to worship God, it is reasonable and warranted by scripture example, that they should be *divided into many particular churches.*"

The church session is to determine (Rec. 240, subd. VII) the uses to which all buildings are put, and the body which may use the property, keeping a record of its action (id. subd. IX) to be submitted to the Presbytery, which has the power of visitation (id. 241, subd. VIII) and likewise keeping a record subject to review (id. subd. IX) by the Synod. The latter also has general jurisdiction (id. 242, subd. IV) and keeps a record (id. VI) subject, however, to the review of the all-powerful tribunal of last resort, the General Assembly. To quote (Rec. 141) the language of the Southern Presbyterian Church:

“Hence, these courts are not separate and independent tribunals, but they have a mutual relation and every act of jurisdiction is the act of the *whole* church, performed by it through the appropriate organ.”

The Assembly is, by the constitution, declared (id. 242, subd. I) to “represent in *one body* all the *particular* churches of this denomination”; and constitutes (Rec. 243) “the bond of union, peace, correspondence and mutual confidence among *all* our churches.” It erects “new synods when it may be judged necessary” (id. 243), superintends “the concerns of the *whole* church” (id. 243) “and in general” it is to recommend and reform manners and promote charity, truth and holiness “through *all* the churches under their care.” (id. 243).

The Earle resolution of 1898 (Rec. 58, 59), in leaving to the Cumberland Church at large all

questions of union, clearly recognized the *local* congregation or *particular* church as "*part* of this church" and quoted the constitution as reciting that the "General Assembly * * * represents in *one* body *all* the particular churches thereof." This resolution (Rec. 58) for a general union emphasized the thought by declaring that the power to unite was "within the scope of the Assembly's constitutional power," wherefore propositions for union should not be made or considered "by any *part* of *this* church until after the General Assembly shall have properly authorized such proceedings." The reviewing powers of the various bodies may be freely exercised of their own motion without complaints and regardless of whether a record has been kept (Rec. 245, par. 75, 76). Of the Assembly, the plaintiffs in the Church case are its highest officers, being, respectively, its Moderator and Stated Clerk. The Baity resolution (Rec. 40) adopted by the Cumberland Church in 1905, authorized the Synod to take all steps necessary to secure title to property in the "united church." This Synod in the answer to the protest of those opposed to a union (Rec. 40) spoke of the plain duty to see that title of the college property was "not clouded and that the property is secured unclouded to the *united* church." Sixty specific instances are shown (Rec. 189-225; Topical Index, Rec. VI, Div. XII) where the General Assembly, Presbyteries and Synods dealt with local property, each exercise of such power being inconsistent with the idea of local or congregational ownership. So, as decided in *Smith v. Wormstedt*, 16 How. 288, 308, the church

itself has, by construction, given a meaning to its constitution "which, if the question was otherwise doubtful, should be regarded as decisive in favor of it."

The question is not, however, in anywise doubtful, and Judge Van Valkenburgh (208 Fed. Rep. 319, 322, 323, Rec. 714-715) in the District Court very pertinently said:

"In resolving the many questions presented, some of which meet us at the threshold of the case, it will aid materially if we first determine the essential character of Presbyterian—and by this I mean also Cumberland Presbyterian—property; how it is held, by and for whom, and in what such Presbyterian property rights consist. In this church the religious congregation or ecclesiastical body holding the property is but a subordinate member of the general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of that general organization. The local congregation is itself but a member of a much larger and more important religious organization, is under its government and control, and is bound by its orders and judgments. Therefore, when the property held by the church is that purchased or conveyed for the general use of the religious congregation, not devoted forever by the instrument which conveyed it, nor by any specific declaration of its owner to the support of any special religious dogmas, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ulti-

mate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such a congregation. It does not belong to the Presbytery or the Synod, nor, in a strict sense, to the general assembly. It belongs to the church which is composed of its entire membership; that membership being governed and controlled by the organic law of the church, the administration of which is lodged in certain judicatories rising, in regular succession, to the general assembly or court of last resort, embracing in itself legislative, administrative and judicial powers. The government of the Presbyterian Church is republican and representative in character. Its administration is vested, not in the individual members, not in the congregation, but in the general assembly and the presbyteries; and the church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties."

In *Hayes v. Manning*, 263 Mo. 1, Judge Walker said:

"So completely has the power of the judicatories named been recognized and exercised in the governmental affairs of the church that, from the foundation of the parent association at Westminster Abbey in 1649 down to the carving out of the mother church of the Cumberland Church in 1810, no question has arisen in either organization as to any express, inherent or implied governmental powers of the individual members, and since that time in neither has such a right in the individual members been asserted until the meet-

ing of the so-called assembly of a minority of the Cumberland Church at Decatur, Illinois, after the union here under consideration had been effected.

The manner in which its constitution was framed and adopted is illustrative of the recognition by the Cumberland Church of the power of its General Assembly. Although organized in 1810, it did not attempt to adopt a constitution until 1883. When steps were taken to frame and adopt this formal compact, no vote of the individual membership or of the church sessions was taken, nor was it ever considered or claimed that the same was an existing right or necessary to the validity of the proposed instrument, but the entire matter, in harmony with the nature of the organization as a representative body, was left to the consideration and determination of the General Assembly and the Presbyteries."

So as to the interest of the general church, Judge Walker said:

"* * * we are justified in the conclusion that the exercise of this power by the General Assembly and prebyteries is not dependent for its validity upon the vote of the individual members."

That the trust upon which the property is held is for the benefit of the whole church, as distinguished from the congregation, is also very clearly recognized by the principle upon which rests *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666; *Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed.

77, and *Sharpe v. Bonham*, 224 U. S. 241, 56 L. Ed. 747. Such practically is also the doctrine stated in New York. (*Westminster Presbyterian Church v. Trustees of New York Presbytery*, 127 N. Y. Supp. 836, 142 App. Div. 855; 137 N. Y. Supp. 1148, 152 App. Div. 949; 211 N. Y. 214, 105 N. E. Rep. 199). In *Free Church of Scotland v. Overton*, McNiven & Wallace's Authorized Report, p. 523, Lord Davey, of the powers of the General Assembly and its interest in local property, said:

"I have no doubt in all matters of management the voice of the Assembly probably would direct whether a portion could be sold and another portion bought."

So, at the expense of repetition, it may be observed that Judge Van Valkenburgh (208 Fed. Rep. 319, 323, Rec. 715) said:

"* * * the church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties."

It is safe, therefore, to assert that the church at large has such an interest in the property that its General Assembly can, as it did (Rec. 271-273) cause to be instituted a case which presents that character of a controversy which Mr. Justice Hughes said (*Helm v. Zarecor*, 222 U. S. 32, 38, 56 L. Ed. 77, 80) "transcends the rivalries" of individuals.

(3) The College and Church cases should be separately considered to see whether there were, as decided below (208 Fed. Rep. 319, Rec. 716-718) sufficient proper representative parties to invoke a decision of the great question at issue.

(a) That in such a controversy the parties may appear by class representation, seems to be beyond the domain of doubt. So it has been specially said as to church controversies (*Smith v. Swormstedt*, 16 How. 288, 302, 14 L. Ed. 942; *Wheelock v. First Presbyterian Church*, 119 Cal. 481, 51 Pac. Rep. 841) and the rule is firmly established in other cases. (*Bacon v. Robertson*, 18 How. 480, 15 L. Ed. 499; *U. S. v. Old Settlers*, 148 U. S. 427, 480, 37 L. Ed. 509, 529; *Wallace v. Adams*, 204 U. S. 415, 425, 426, 51 L. Ed. 547; *American Steel & Wire Co. v. Wire Drawers, etc., Union*, 90 Fed. Rep. 598, 606, 607). The real duty always is, as Mr. Justice Nelson once said (*Smith v. Swormstedt*, 16 How. 288, 302), upon the court to see to it "that representative parties are brought on the record *fairly* representing the interest or right involved, so that it may be *fairly and honestly tried*." This view was enlarged upon in *U. S. v. Old Settlers*, 148 U. S. 427, 480, 37 L. Ed. 509, 529, where the Commissioners for an Indian tribe were permitted to sue, and in *American Steel & Wire Co. v. Wire Drawers, etc., Union*, 90 Fed. Rep. 598, 606, 607, where leaders of a strike were held proper representative defendants in an injunction against a strike. With these preliminary suggestions, the two cases should, as was done below (208 Fed. Rep. 319, 322-323, Rec. 716-718) be con-

sidered separately, bearing in mind that the General Assembly, the supreme power of the church, expressly (Rec. 217-273) directed the suits to be instituted by this specific resolution:

"Resolved, That this Committee retains the services of Frank Hagerman, Esq., to represent and protect the interest of the Presbyterian Church in the U. S. A., in the Federal and State Courts of Missouri, and further.

Resolved, That he (Mr. Hagerman) be authorized to protect or defend any suit or proceeding in said courts in the name of this Committee, or such Board, agency or corporation of the church whose interests in the title to any property formerly of the Cumberland Presbyterian Church, and now vested in the said Presbyterian Church in the U. S. A., by virtue of the Reunion and Union of the Cumberland Presbyterian Church and the Presbyterian Church in the U. S. A. is threatened, and who may legally become party to said proceeding or suit."

(b) The Kansas Synod was a voluntary subsidiary part of the Cumberland Church, and after the union continued as such of the united church. It, for the purpose of holding property in Kansas, in September, 1909, organized (Rec. 267-269) a Kansas corporation in the same name as the voluntary organization. This corporate body, together with individuals who were members of the voluntary body known as the Kansas Synod, in recognition of the validity of the union, and fairly representing a class, upon November 13, 1909, filed, by express authority of the General

Assembly (Rec. 271) and Synod (Rec. 234) the bill (Rec. 27) in the College case, against the college corporation, a nominal party, and individuals who were members of the alleged Missouri Synod of the dissenters and trustees elected by them. They were deemed fair representatives of that class known as dissenters. They were making actual claim to the college property. The College was founded by the Synods of Kansas and Missouri, voluntary associations of the Cumberland Church. The records in relation thereto plainly so show (Rec. 141-187). The articles of incorporation of the college (Rec. 164-168) recite that of the thirteen trustees to manage it, three were to be named by the Kansas Synod (Art. 2, par. 2), and that each Synod was entitled to have made to it (Art. 4, par. 7) reports of the condition, prospects, necessities and wants of the college, and to have rendered to it accounts of all receipts and disbursements. Meetings of the trustees were required (Art. 5, par. 7) as often as the Synods asked, and the latter were required (Art. 7) to approve all amendments to the articles of incorporation. There was thus retained to the Kansas Synod the absolute right of visitation as strongly as it ever existed in any founder or his assignee. This, wholly irrespective of any question of class representation. The Baity resolution (Rec. 40) of the Cumberland Synod of Missouri in 1905, provided for the transfer of the use of the College property to the united church, if and when the union was effected. The Synod, after the union, in its answer to the protest (Rec. 40-42) of the dissenters, so stated the

purpose. Later, the union formally met the approval of this Synod (Rec. 42-43). The Kansas Synod, the voluntary association, as distinguished from the corporation, passed (Rec. 233-234) exactly the same resolution as was adopted (Rec. 40-41) in Missouri. That Synod also expressly directed (Rec. 233-234) the protection of the college by it, thus authorizing the institution of this action, as was also expressly authorized by the General Assembly (Rec. 271-272). The Kansas Synod surely had such an actual or representative interest as entitled it to invoke the aid of a court against usurpers who solemnly declared (Rec. 489) that such synod had no longer any existence, and declared (Rec. 490) its office vacant, and then had its own synod institute (Rec. 491) a like suit.

In 1907, after the union, the Assembly (Rec. 227) and Missouri (Rec. 229) and Kansas (Rec. 228) Synods each dealt with and gave directions as to the local property. Moreover, the dissenters themselves organized (Rec. 286-288) a new General Assembly, which had (Rec. 290) practical charge of the litigation. They also organized (Rec. 485-486) that which they now claim is the Missouri Synod of the Cumberland Church. This body appointed new trustees (Rec. 492) of the college, raised money to employ counsel (Rec. 492, 494) directed such trustees "to take possession and hold all the property of said school," and to look "after the recovery, control and management of said school, including the real estate and endowment." Such a suit was filed (Rec. 495-496) seeking a recovery of all the college

property, the petition (Rec. 499-506) reciting that the college is "controlled and owned by and in the interest of those synods of the Cumberland Presbyterian Church and not otherwise" (Rec. 499) i. e., the Missouri and Kansas Synods, the latter (Rec. 499) had ceased to exist and the legal Missouri Synod directed (Rec. 503) the bringing of the suit by the plaintiffs as trustees named by it. The employment of appellants' counsel in these cases was (Rec. 496) by "a mass meeting" of alleged Cumberlands, as well as by (Rec. 491-492) the *alleged* Kansas and Missouri Synods. These prudent lawyers did not take employment from local congregations or particular churches, but looked to higher bodies. Therein was, at least, a recognition that the Synods and members at large had sufficient interest to enable them to act. If, therefore, the members of the Kansas Synod, assuming to have been valid, the union which they recognized, acting under the *express* directions (Rec. 271-273) of the General Assembly are not fairly representative plaintiffs, it is hard to conceive who would be. Upon this subject Judge Van Valkenburgh (208 Fed. Rep. 319, 324, Rec. 716) after determining that plaintiffs in the Church case were fairly representative, added:

"The same reasoning applies to the college case. There, out of abundance of caution, the Synod of Kansas, as an incorporated body, was joined with members of the voluntary association, who sued as members of a class. In my opinion, the latter alone were sufficient if my view as to the character of the church ownership be correct."

To this might well have been added these thoughts: While the Kansas Synod was organized to hold Kansas property, yet if it took an interest in property in Missouri, no one but the state could complain (*Bank v. Matthews*, 98 U. S. 621, 25 L. Ed. 188). Here it might have been a matter of some doubt from the record whether the corporation or the voluntary association was the Kansas Synod and it was thought best to join both. By so doing the plaintiffs put themselves in a position to meet any possible contention that might be made by defendants as to who should bring the suit. The founders and incorporators of the Missouri Valley College used the name "Kansas Synod." No harm was done by including the corporation known as the Kansas Synod as one of the plaintiffs.

A decree could have been safely rendered for the individuals or corporation, or for both, because in the end it established the rights of the church, the General Assembly of which was in charge of and actually conducting (Rec. 271-273) the litigation. Or if the Synod was not fairly representative the record could be treated as amended by substituting in this case the Moderator and Stated Clerk, practically as was done in *C. G. W. R. Co. v. First Methodist Church*, 102 Fed. Rep. 85, 87, 42 C. C. A. 178, where, in a law suit by a Kansas church corporation, instead of by certain trustees for the church, this court treated, without costs, the record as amended by the substitution here of such trustees for the corporate body.

(c) In the Church case the plaintiffs are, respectively, the Moderator and Stated Clerk and chief officers of the General Assembly of the Presbyterian Church, and are under the specific direction (Rec. 271-273) of the latter body, suing as such and as representatives of a class, consisting of the members of the entire Presbyterian Church. Under the church constitution, the general supervising control and power as to all church property is vested in the General Assembly and the church at large is interested generally in all property, regardless of membership of any particular organization. Since the original Presbyterian church organization, the final and controlling voice as to local church property has been so often, without objection, actually exercised by the General Assembly, that it may be said that everyone heretofore recognized its power. The Constitution declares it to be the authority which is to represent in *one* body *all* the particular churches of the denomination. The Cumberland Church, by what is known as the Baity resolution (Rec. 40) adopted at the time of the union, so recognized, by directing the Synod, a body above the local church, to secure in the "*united church*" the title to all Cumberland property. The General Assembly itself expressly directed (Rec. 271-273) the institution of this particular suit to establish in the members of its church, their beneficial interest in all that part of the Missouri Cumberland property, from the use of which attempts were being made to exclude them. There were 39 counties (Original Bill, Rec. 8-11; First, Rec. 15, and Second, Rec. 25, Amendments thereto) in

Missouri where the dissenters were enabled or threatened to keep possession of the churches formerly belonging to the Cumberland Church. At the time of filing the bill they were actually using many of same for their own congregations, denying the validity of the union and the right of those of the Presbyterian faith to such use, even though they had been members of the Cumberland congregation before the union, and became Presbyterians by reason thereof. The purpose of the bill was to determine the trust relation of the Presbyterian Church to these properties because of the union, and enjoin the dissenters from interfering with the use of the same by those of the united church. To this end there were made defendants, as representatives of a class of dissenters, members of the alleged Cumberland Church consisting of those constituting the Synod and persons who had or threatened to take actual possession of the properties, all of whom were acting together throughout the state in the assertion of the claim that the dissenters constituted the former Cumberland Church and were entitled to the sole use thereof. Here again, if this Moderator and Stated Clerk, armed with specific authority from the General Assembly, are not *fairly* representative, it is impossible to conceive of fair representation.

(4) Having then these proper parties plaintiff, it remains to be seen whether there has been some failure to bring in an *indispensable* party defendant.

(a) In the College case, the defendants were members of an alleged Synod which attempted to

usurp the rights of the regular Synod because of the alleged invalidity of the union. Joined with them were the trustees appointed by them, and expressly directed (Rec. 491) to enforce the *alleged* rights to the College property. They were represented by lawyers named (Rec. 491) by the body. This was even more representative of the class than leaders of a strike who were held to so be. (*American Steel & Wire Co. v. Wire Drawers, etc., Union*, 90 Fed. Rep. 598.)

(b) In the Church case, officers, trustees and members of the dissenting body in actual, or threatening to take, control or possession of the property were made defendants. Here again was a representative body.

(c) These defendants, being proper representatives, it remains to be seen whether there were indispensable defendants omitted. The alleged omission and point made consists in this: There were absent trustees holding the title, and members of the former Cumberland Church, who were citizens of Missouri, and yet recognized the union; since part of the defendants were also trustees and members who disclaimed the validity thereof, all the absent ones were necessary parties; if brought in, and the parties arranged according to their interests, there would be found no diverse citizenship. As put (Appellants' Brief, 328) by counsel:

"That portion of the old Cumberland Church membership and congregation in each locality which adhered to their faith was represented; the other portion, which approved the merger, was not represented at all."

In saying that "the other portion * * * was not represented at all" was only meant that members of local congregations were not named as plaintiffs and there could be no class representation except by such members.

This defense was first asserted as a plea to the jurisdiction by the claim that had such representation been made, jurisdiction would have been defeated, because these absent parties were, like the present defendants, citizens of Missouri, and when ranged according to their interests, their presence would defeat the jurisdiction. In denying the pleas (Rec. 707) the trial judge said:

"* * * when originally filed they were regarded as pleas to the jurisdiction of this court, although broad enough in their terms to serve as objections for want of indispensable parties."

Again at final hearing (208 Fed. Rep. 319, 325, Rec. 718) it was said:

"It is manifest that the bringing in of additional parties is desired, not for the purpose of a more complete determination of the controversy, but to defeat the jurisdiction of this court. Fortunately, however, this entire matter has been foreclosed by the decision of the Supreme Court in the cases cited."

As a plea to the jurisdiction in Tennessee, such claim was held insufficient (*Helm v. Zarecor*, 222 U. S. 32, 56 L. Ed. 77; *Sharpe v. Bonham*, 224 U. S. 241, 56 L. Ed. 747). In principle, there is

no difference in the fact that the contention now stops with saying the presence of those parties was indispensable, whereas, treated as a plea to the jurisdiction, it would have added the suggestion that if brought in, the requisite diverse citizenship would not exist. In either event, the parties so said to be indispensable must, in a great controversy like that being now considered, be regarded as either merely nominal or as already fairly represented by those who are upon the record.

(d) If, as already shown, the *general* church has an interest in seeing that *particular* church property is not diverted from the uses to which its trust nature requires it to be put, then by *class* representation, the *transcendent* question can be presented by and against *fair* representatives. This without joining others who, in such cases, would be regarded as nominal, not indispensable parties. In such cases, where "jurisdiction depends upon the party, it is the party named in the bill" (*Osborn v. Bank*, 9 Wheat. 738, 857; *Davis v. Gray*, 16 Wall. 203, 21 L. Ed. 447; *In re Stutsman Co.*, 88 Fed. Rep. 337) just as in the familiar case of a creditor's bill (*Stewart v. Dunham*, 115 U. S. 61).

(e) If, however, there were, under the general equity practice, any doubt about this question it will be removed by a glance at the state statute (Revised Statutes Missouri, 1909, Section 2535), which provides:

"*Any person claiming any title, estate or interest in real property, whether the same*

be legal or *equitable*, certain or contingent, present or in reversion, or remainder, *whether in possession or not*, may institute an action against any person or persons having or *claiming to have any title, estate or interest* in such property, *whether in possession or not*, to ascertain and determine the estate, title and interest of said parties, respectively, in such real estate, and to define and adjudge by its judgment or decree the title, estate and *interest* of the parties *severally* in and to such real property. And upon the trial of such cause, if same be asked for in the pleadings of either party, the court may hear and finally determine *any and all rights, claims, interests, liens and demands whatsoever of the parties, or of any one of them*, concerning or affecting said real property, and may award full and complete *relief*, whether legal or equitable, to the several parties and *to each of them*, as fully and with the same force and effect as the court might or could in any other or different action brought by the parties, *or any one of them*, to enforce any such right, claim, interest, lien or demand, and the judgment or decree of the court when so rendered shall be as effectual *between the parties thereto* as if rendered in any other different or separate action prosecuted therefor."

Such a statute gives a distinct right which will be enforced by the chancery courts of this jurisdiction. So it has been distinctly decided (*Holland v. Challen*, 110 U. S. 15, 25; *Greeley v. Lowe*, 155 U. S. 58, 75; *Dick v. Foraker*, 155 U. S. 404; *Rich v. Braxton*, 158 U. S. 375; *Smith v. Reeves*, 178 U. S. 436, 444). In *Arndt v. Griggs*, 134

U. S. 316, Mr. Justice Brewer dealt with the question. So did Judge Sanborn in *Ormsby v. Ottman*, 29 C. C. A. 655, 85 Fed. Rep. 492. The object of the statute is (*Huff v. Land Co.*, 157 Mo. 65) to allow any person claiming an interest in land in possession or expectancy, to call upon anyone claiming an adverse interest to have his rights settled by a court. The right to call for such judicial settlement is given (*Utter v. Sidman*, 170 Mo. 284) without regard to the estate or interest, whether it be legal or equitable, certain or contingent, present, in reversion or remainder, and whether the party suing or sued be in or out of possession. The right is given against any one person asserting a claim to settle that claim alone, without the necessity of joining or bringing in anyone else. Such is the settled construction of the statute (*Graton v. Holliday, etc., Co.*, 189 Mo. 322, 332; *Richards v. Mining Co.*, 221 Mo. 149, 173; *Toler v. Edwards*, 249 Mo. 152, 161; *Charles v. White*, 214 Mo. 187, 211). Such being the right given by the statute, it will be here enforced. This statutory right would, if there were no other, be a complete answer to the contention that other parties not making the same claim as defendants should be brought in to defeat jurisdiction.

V.

Mt. Carmel Church.

(a) The Church bill (Rec. 10) sought to deal with a small property in Henry County, Missouri, known as the Mt. Carmel Church. The answer

pleaded (Rec. 631-632) as *res adjudicata* a decree of November 5, 1909 (Rec. 663-665) in the state circuit court in *James G. Turk v. Oscar Mitchell*. Here assignment of error 18 (Rec. 697) is that as to such property and Turk, the court should have decreed the plea of *res adjudicata* to be good, and dismissed the case as to it. The point is renewed (Appellants' Brief, 342-343) in argument.

(b) In 1908, Turk sued (Rec. 652) Mitchell and two other individuals as alleged elders of the united church and trustees holding the property, claiming (Rec. 652-656) that in 1890 he deeded (Rec. 653) the property to certain individuals as trustees of the Cumberland Church, but there had been a diversion of the trust and the property was no longer used by the church named in the deed, whereby the title reverted to him personally. Some of the defendants pleaded (Rec. 656-662) that by virtue of the union they held the property for the united church. Others that they (Rec. 660-662) were in fact the only true trustees and entitled thereto. There was a decree (Rec. 663-665) that the property should not revert to the grantor, but was in two persons representing the dissenters. No proof was offered upon the relation of the parties to the litigation, either church, or the property, or as to the issue of the validity of the union other than the pleadings in the case. Nothing appears as to whether there was or was not any *fair* representation of any class.

The case really had no element of class litigation and *Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666, is conclusive that there was no *res adjudicata* because the parties were not the same.

(c) The District Court evidently acted upon the practical theory that the union being upheld as to all other property in the state, this little church would probably hereafter voluntarily fall in line, and be glad to be part of the great organization. In any event, the decree (Rec. 688, par. 5) recited that it was "without prejudice to the rights of the parties to the property of the Mt. Carmel Cumberland Presbyterian Church, described in Volume 2 of the printed record herein at pages 573, 574, 631-632." In view of the unsatisfactory state of the record, this was really the best solution of the issue. Whether a dismissal, even where fixed rights have become vested by reason of the litigation, should be, with prejudice, depends so much upon the discretionary powers of a court below that it would take an abuse of discretion to warrant a reversal. (*Pullman's Palace Car Co. v. Central Transportation Co.*, 171 U. S. 138, 146, 43 L. Ed. 108, 112). Where, as here, no such rights have so vested, the ordinary rule is that there is the absolute right of dismissal at any time before the decree becomes final. (*Chicago, etc., R. Co. v. Rolling Mill Co.*, 109 U. S. 702, 27 L. Ed. 1081, 1086; *American Zylonite Co. v. Celluloid Mfg. Co.*, 32 Fed. Rep. 809.) Certain it is that so far as concerns the action below, the State Circuit Court decree is as effective now as it was before the bill in the Church case was filed.

(d) We thought it probable that counsel, in originally presenting this objection, overlooked the nature of the decree below. But as the objection is renewed (Appellants' Brief, 513-516),

it need only be said that Judge Carland (138 C. C. A. 217, 222 Fed. Rep. 669, 670, 671) upon the subject said:

"In regard to the plea of *res adjudicata* arising from the judgment in *Turk v. Mitchell*, it seems that the decree entered below was without prejudice to the rights of the parties to the property of the Mt. Carmel Presbyterian Church. Of this action of the trial court we do not think counsel can complain."

Respectfully submitted,

FRANK HAGERMAN,
*Solicitor for Appellees James
M. Barkley, Moderator, and
William H. Roberts, Stated
Clerk.*

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 257.

J. F. SHEPARD, N. LOGAN, W. H. BILLING
et al.,

Appellants,

vs.

JAMES M. BARKLEY, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America et al.,

Appellees.

J. W. DUVALL et al.,

Appellants,

vs.

THE SYNOD OF KANSAS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA et al.,

Appellees.

Appeal from the United States Circuit Court of Appeals
for the Eighth Circuit.

**APPELLANTS' MOTION TO AMEND PETITION
FOR, AND THE ORDER GRANTING AN
APPEAL AND CITATION.**

Come now appellants in the above-entitled consolidated cases (leave to file this motion having been first had and obtained), and show to the Court that

by clerical error, inadvertence and mistake, the names of certain appellants, namely: B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx, and certain appellees, namely: Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler, were left out of the petition for an order allowing an appeal, the order allowing an appeal herein and the citation herein. Appellants therefore move the Court to permit appellants to amend the petition for an order allowing an appeal, and the order allowing an appeal, and the citation to the appellees herein, and that the same be ordered to be amended by inserting in the petition for an order for an appeal herein, as set out at pages 746, 747 of the printed record, after the words "States of America", in line 12, from the top of page 747, and before the words "Your petitioners", in line 13, from the top of said page, the names: Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler, and appellants move the Court to make said last-named persons appellees herein. Also amend the said petition for the order allowing an appeal and the order allowing an appeal herein, by inserting after the words "James E. Eberts", in line 23, from the top of said

printed record, page 747, and before the words "assignment of errors" in line 24 thereof, the names B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx. And appellants move the Court to make said last-named persons parties appellant herein.

Also amend the citation herein set out at page 755 of the printed record, by inserting after the words "United States of America", in line 9, from the top of said page, and before the word "Greeting", in line 10 thereof, the names Synod of Kansas of the Presbyterian Church in the United States of America, H. G. Mathis, R. Thompson, William Foulkes, J. B. Larimer, Samuel Garvin and Charles M. Tabler. And also amend said citation by inserting after "James E. Eberts", in line 29, from the top of the printed page 755, and the words "are appellants" in said line, the names B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx.

For authority for this motion appellants cite:

Walton v. Marietta Chair Co., 157 U. S. 342,
l. c. 346, 347;

Knickerbocker Life Insurance Co. v. Pendleton
et al., 115 U. S. 339.

For grounds for this motion, appellants state that the printed record on file in this court, in these con-

solidated cases show that these cases were consolidated in the District Court by stipulation of parties (Rec., p. 37). They were heard together in the District Court. By agreement of the parties one record was made for both cases on appeal to the United States Circuit Court of Appeals (Rec., pp. 704 to 707). The cases were briefed by both sides and heard, argued and decided as one case in the United States Circuit Court of Appeals (222 Fed. Rep. 669; Rec., p. 735).

The appeal herein was granted in both cases on one petition by Honorable Willis VanDevanter, Associate Justice of the Supreme Court of the United States (Rec., p. 747). One citation was issued in both cases by him (Rec., p. 755).

The petition for an order allowing the appeal, by clerical error, and by inadvertence and mistake, because of the numerous parties, did not include the names of B. F. Garst, G. W. Freeman, William Hinton and Edwin W. Houx, who, in fact, were appellants herein. This mistake is clearly shown by the petition itself, wherein it is stated:

“Your petitioners are appellants in the consolidated causes entitled J. W. Duvall *et al.* Appellants, v. The Synod of Kansas of the Presbyterian Church in the United States of America *et al.*, Appellees, No. 4288, and J. F. Shepherd *et al.*, Appellants, v. James M.

Barkley, Moderator, Etc., *et al.*, No. 4289, in the United States Court of Appeals, Eighth Circuit, in which causes judgment was rendered on, to wit, July 9, 1915, affirming the final decree of the District Court of the United States for the Western District of the State of Missouri passed by said last-named court in said consolidated causes. Printed copy of the transcript of record of said causes in said Circuit Court of Appeals, together with the opinion of said District Court and said Circuit Court of Appeals, accompany this petition and are hereby made a part hereof" (Rec., p. 746).

Said printed copy of the transcript of the Record, so made a part of and accompanying said petition, shows that said parties were appellants in said consolidated causes in the United States Court of Appeals, and said reference in said petition to said transcript also shows that they are the appellants in said causes in this Court. It also shows that said appellees were appellees in said cause, and that it was the intention to appeal both of said causes and to include in said appeal all the parties appellant and all the parties appellees who were such parties in the United States Circuit Court of Appeals.

The citation herein issued by Mr. Justice VanDevanter, which was served upon Mr. Frank Hagerman, attorney for all the appellees in both of the consolidated cases, on June 23rd, 1916, recites that an

appeal had been granted in both cases. It thus clearly appears from these records and papers that these omissions are merely clerical and were made by inadvertence and mistake.

Said petition for an order allowing an appeal is as follows (Rec., pp. 746-747):

To the Honorable Willis VanDevanter, Associate Justice of the Supreme Court of the United States:

Your petitioners are appellants in the consolidated causes entitled *J. W. Duvall et al., Appellants, v. The Synod of Kansas of the Presbyterian Church in the United States of America, et al., Appellees*, No. 4288, and *J. F. Shepherd et al., Appellants, v. James M. Barkley, Moderator, Etc., et al.*, No. 4289, in the United States Circuit Court of Appeals, Eighth Circuit, in which causes judgment was rendered on, to wit, July 9, 1915, affirming the final decree of the District Court of the United States for the Western District of the State of Missouri, passed by said last-named court in said consolidated causes. Printed copy of the transcript of record of said causes in said Circuit Court of Appeals, together with the opinion of the said District Court and said Circuit Court of Appeals, accompany this petition and are hereby made a part hereof.

Your petitioners pray for an appeal from the said judgment of said Circuit Court of Appeals to the Supreme Court of the United States upon the following grounds:

These are not cases in which the decree of the Circuit Court of Appeals is made final; on the contrary, they are cases wherein the jurisdiction of the District Court was not dependent entirely upon the opposite parties to the suit being citizens of different states, but was dependent also, and was invoked, upon the further ground that the suits were suits arising under the Constitution of the United States, as appears on pages 12, 27, 32, 519 and 556 of the printed record before the Circuit Court of Appeals.

Your petitioners further show that the amount or matter in controversy in each of these suits largely exceeds one thousand dollars besides costs.

The appellees in said Circuit Court of Appeals are James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers representatives of the members of the Presbyterian Church in the United States of America.

Your petitioners, who are appellants in said cases, are: J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W.

Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Russell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Steward, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts.

Assignment of errors is filed herewith.

WM. HENRY WHITE,

Attorney for Petitioners.

Appeal allowed and cost bond fixed at five hundred dollars.

June 16, 1916.

WILLIS VANDEVANTER,

Associate Justice.

Endorsed:

Filed in the U. S. Circuit Court of Appeals,
July 6, 1916.

The citation issued herein is as follows (Rec., p. 755):

United States of America—ss.

To James M. Barkley, Moderator of the General Assembly and Chairman of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, and William H. Roberts, Stated Clerk of the General Assembly and Secretary of the Executive Commission of the General Assembly of the Presbyterian Church in the United States of America, individually and as such officers and representatives of the members of the Presbyterian Church in the United States of America—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal allowed by me in the following cases in the United States Circuit Court of Appeals, Eighth Circuit, in the causes of J. W. Duvall *et al.*, appellants, v. The Synod of Kansas of the Presbyterian Church in the United States of America *et al.*, appellees, No. 4288, and J. F. Shepherd *et al.*, appellants, v. James M. Barkley, Moderator, Etc., *et al.*, appellees, No. 4289, wherein J. F. Shepherd, N. Logan, W. H. Billings, A. M. Todd, Lee Reese, Charles O. Wall, S. A. Catlin, M. M. Hunnell, James G. Turk, E. T. Steele, L. F. Clemens, J. W. Duvall, R. L. Layman, A. W. Green, James C. Jenkins, John W. Walker, Heber C. Johnston, T. W. Craven, John T. Trent, Robert Graham, James M. Rus-

sell, John Neally, A. A. Young, J. W. Manning, Erastus W. Hillhouse, Caleb Andrews, James Martin, William L. Foley, F. M. Rose, Charles Rose, E. C. Haines, J. S. Graybeil, Laura Cook (wife of John Cook), E. G. Stewart, John D. Howell, Edward R. Duggins, Samuel H. McElvain, James Davis, J. Thomas Jones and James E. Eberts are appellants, plaintiff in error, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants in the appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Willis VanDevanter, Associate Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand nine hundred and sixteen.

WILLIS VANDEVANTER,
*Associate Justice of the Supreme
Court of the United States.*

Copy received June 23, 1916, with the same effect but no more than if served by the proper officer upon appellees.

FRANK HAGERMAN,
Solicitor for said Appellees.

Endorsed:

No. 4288. J. W. Duvall *et al.*, Appellants, v. The Synod of Kansas of Presbyterian Church, Etc., *et al.* No. 4289, J. F. Shepherd *et al.*, Appellants, v. James M. Barkley, Moderator, Etc., *et*

al. Citation on Appeal to Supreme Court U. S.
Filed July 6, 1916. John D. Jordan, Clerk.

Appellants herein further show to this Honorable Court that the said defect has not prejudiced and the amendment sought will not injure the appellees in this cause.

Wherefore, appellants pray that said petition and citation be amended, and that said parties appellant and parties appellee be made parties herein upon such terms as this Honorable Court may deem just to impose. The appellants herein offer to give bond in such amount as this Court may require and fix. If this Court deems just to do so, these appellants pray that a citation be issued to all said appellees, returnable at such time as this Honorable Court may fix. The appellants, however, show to the Court that the appellees have had actual notice of the appeal herein, in both cases, for the citation, service of which was acknowledged by Mr. Hagerman on June 23rd, 1916, who was then attorney for all the appellees herein, recites that an appeal was granted in both of said causes. This was equivalent to such a notice and it is believed that there is no further necessity for a citation being served upon appellees (*Goodwin v. Fox*, 120 U. S. 775). The issuance of a citation is not jurisdictional (*Dayton v. Lost*, 94 U. S. 112; *Railroad Co. v. Blair*, 100 U. S. 661).

These appellants, however, pray the Court to grant these amendments upon any terms deemed just by the Court.

Respectfully submitted,

CHARLES E. MORROW,

Solicitor for Appellants.

M. D. ABER,

Of Counsel.

I, Charles E. Morrow, of counsel for appellants herein, do hereby certify that in my judgment the foregoing motion is well founded and that the same is not interposed for delay.

CHARLES E. MORROW,

Solicitor for Appellants.

To Frank Hagerman, Esq.,

Solicitor for Appellees.

Sir:

Please take notice that on Monday, March 4, 1918, at the opening of the Supreme Court of the United States at the Capitol in the City of Washington in the District of Columbia, or as soon thereafter as counsel can be heard, the appellants will ask leave to file the motion of which the foregoing is a copy, and that the same will be submitted to the Court for its decision thereon.

St. Louis, Missouri, February 23, 1918.

Yours respectfully,

CHARLES E. MORROW,

Solicitor for Appellants.

Third National Bank Building, St. Louis, Mo.